بِسۡمِ ٱللَّهِ ٱلرَّحۡمَٰنِ ٱلرَّحِيمِ

Haläl o Haräm

Ch 09: Marriage and Divorce

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Note: When different opinions are presented regarding a ruling, the preferred opinion has been mentioned in red color.

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Attraction towards the opposite sex is one of the natural desires that Alläh has created in human body. In childhood this impulse is very limited but as the person approaches puberty, this impulse grows stronger and stronger. At times, it even touches the limit of madness. Alläh has made his creation in such a way that each and every peculiar action, mannerism, movement and countenance of the opposite sex adds fuel to the fire of this passion. Additionally, the Creator of the universe has made several things which stimulate and stir the hidden sexual desire. The cool beauty of the moon, the lovely colour of rose, the enchanting fragrance of jasmine, the gentle morning breeze, the greenery of the spring season and the natural charm of the rainy season are some of the strong stimulants which excite human passion. Humans, on their part, too have not lagged behind in creating situations which enhance and bolster this desire. The sweet melodies and lustful poetic descriptions and depictions, meant only for this purpose are just a few examples of the extreme.

Can you say why the Wise Originator of everything has created these phenomena which replace a person's comfort and calmness with anxiety and unease? It is because Alläh wants to test our piety, obedience and willingness to please Him in even such difficult circumstances. Another purpose for creation of sexual desire is the growth and continuance of human race. This could have also been achieved by making the satisfaction of sexual desires a free-for-all like rain water that has no boundary nor limit. Obviously, it would have led to overindulgence, immodesty, mutual contests and rivalries. The human race would have been deprived of the knowledge of its origin and people would never have recognized their fathers. Finally, mutual trust and confidence – so essential for peaceful co-existence in the society – would have vanished totally. The evil and waywardness it would have generated in the society needs no elaboration. There have been several periods in human history when the quasi-animal humans and wicked devils who in their wickedness would put the Satan (Iblïs) to shame have put human society through this wicked experiment. And the experiments, understandably, resulted in what would bleed human modesty and demureness.

The days of the Roman decline (before the blessed advent of Isläm) when prostitution was a respectable profession, and Muzdak's movement (before Isläm) which permitted sex with each and every woman, even one's mother and sister, are some of the shocking instances of this inhumanity. Unfortunately, the modern Jähiliyyah (ignorance) of the West has been attempting to popularize those past stupidities once again under the garb of "art and culture". To Alläh we raise our complaint of helplessness!

In opposition to these philosophies of overindulgence, appeared the other extreme of prohibiting all sexual relations, treating them as unholy and unpardonable sin. In Rome of later days, this view got acceptance as a reaction to the campaign of excessive licentiousness. In Persia, Mänï's movement spread as a counter to Muzdak. Mänï encouraged monasticism and brought in such ideological fanaticism that a child would consider even the existence of his parents a sin. In fact, people started hating their own selves, treating their births as the result of a detestable sin. This ideological extremism also brought in hatred, cruelty and inhuman apathy. Seclusion and indifference towards the society gained currency. The natural consequence was decline in population of the human race. Moreover, this unnatural obstruction of the healthy human desire had adverse medical and psychological impacts on the people.

In contrast to these ideological extremes, Isläm which is the natural religion and way of life, came up with a balanced path of moderateness in this sphere of life as well. For fulfilling the natural human desire through lawful means, it not only permitted marriage but in fact called it preferable. On the other hand, it is equally strict in its prohibition of unlawful copulation.

It is a fact that any person who studies the moderate and healthy ideas of Isläm and rulings related to sexual relations, compares them with the natural needs of an uncorrupted soul, and contrasts them with the ideas put forward by other religions and ideologies will be forced to bow before the glory of Isläm. The fact that Islämic laws are in complete harmony with human nature, and that they are moderate and comprehensive, will undoubtedly make him thank Alläh for this great favour of His: the Sharï'ah of Isläm. He will be forced to acknowledge that إِنَّ الدِّينَ عِندَ اللهِ الإِسْلاَمُ (The true faith and way of life acceptable to Alläh is Isläm alone.[1])

01. Encouragement for Marriage

Isläm has not only permitted marriage but in fact supported and encouraged it. Isläm has explicitly prohibited single (unmarried) life. Calling for the attention of the unmarried persons of the Muslim society, the holy Qurän says: "Arrange the marriage of the spouseless among you."[2] Forbidding women from living a life of singlehood, Alläh says: "Do not prevent them from marrying their (former) husbands."[3] The Glorious Book while enumerating the attributes of the prophets of Alläh mentions that they used to have wives and children: "We sent Messengers before you (O Prophet ﷺ), and made for them wives and offspring."[4] The Book also praises the pious servants of Alläh who raise their hands

[1] Qurän 3:19
[2] وَأَنْكِحُوا الأَيَامَى مِنْكُمْ (Qurän 24:32)
[3] فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ (Qurän 2:232)
[4] وَلَقَدْ أَرْسَلْنَا رُسُلًا مِنْ قَبْلِكَ وَجَعَلْنَا لَهُمْ أَزْوَاجًا وَذُرِّيَّةً (Qurän 13:38)

before Allāh asking for comfort-providing wives and children: "Our Lord! Bestow on us from our wives and our offspring the comfort of our eyes."[5]

There are numerous Hadīths also which encourage and emphasize the importance of marriage. Addressing the youth, the holy Prophet ﷺ said: "Whoever is capable of marrying must marry."[6] When some Sahābah (holy companions) resolved to refrain from marriage, the holy Prophet ﷺ expressed his strong disapproval: "I fear Allāh more than you do, and I am more pious than you all, yet I marry women. Whoever, turns away from my path is not among us (is not a Muslim)."[7] The Prophet ﷺ called marriage his tradition and the tradition of prophets before him. The noble Messenger also encouraged marriage at an early age after puberty once the person develops sexual desire, saying that this act of marriage protects the person from the Satan's trap. Some of the holy companions sought permission for remaining unmarried so that they might utilize all their time in Allāh's worship and His remembrance. But the holy Prophet ﷺ did not allow it. The holy Prophet (peace be upon him) himself wedded several women belonging to different tribes.

02. Ruling of marriage

Keeping in view the above emphases of the Islāmic Sharī'ah regarding marriage and also the needs and physiological states of different people, Islāmic jurists have elaborated the rulings regarding marriage. They have detailed how important marriage is under different circumstances.

If a person is likely to commit the sin of fornication in case he does not marry, then marriage will be **Wājib** (compulsory) for him so that he may safeguard his modesty and refrain from committing the prohibited act of unlawful copulation.

If a person has normal and healthy sexual desire which is not too strong to make him indulge in fornication i.e., he is in control of his desires, then marriage will be **Sunnah** (tradition) for him.

A person who is devoid of sexual desire and is incapable of sexual intercourse (impotent) – whether by birth or on account of age, disease, etc. – **should not marry**, as he will be unable to perform the marital duties and safeguard his wife's chastity.

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[5] رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا قُرَّةَ أَعْيُنٍ (Qurān 25:74)
[6] مَنِ اسْتَطَاعَ البَاءَةَ فَلْيَتَزَوَّجْ (Bukhārī 1905)
[7] أَمَا وَاللَّهِ إِنِّي لَأَخْشَاكُمْ لِلَّهِ وَأَتْقَاكُمْ لَهُ لَكِنِّي أَصُومُ وَأُفْطِرُ، وَأُصَلِّي وَأَرْقُدُ وَأَتَزَوَّجُ النِّسَاءَ، فَمَنْ رَغِبَ عَنْ سُنَّتِي فَلَيْسَ مِنِّي (Bukhārī 5063)

If an old man marries a similarly old woman so that the duo may help and serve each other in old age, then it is allowed, as there is no fear that the woman may indulge in extra-marital relations.

03. Methods of Sexual Relations in the Days of Ignorance

Before Isläm, several customs going under the name of Nikäh (marriage) were prevalent which were nothing but the worst instances of immodesty and indecency. The Mother of Believers Hazrat Aisha رَضِيَ اللّٰهُ عَنْهَا narrates that there were four kinds of sexual relations prevalent in the Days of Ignorance. (The first one was the normal permissible Nikäh, while the other three were as follows:)

Flag relation: Mercenary prostitutes would place a flag at their doors to symbolize their profession. Men would visit such women. Such relations were termed flag relations.

Group relation: Many people of a particular tribe or region would have sexual relations with the woman. The woman would not let any other man enter into sexual relationship with her. After childbirth, she would associate one of those men with the baby as his father based on similarity in looks.

Nobility-seeking relation: To get a baby of noble lineage, the woman would have relation with prominent people of different tribes.

Isläm forbade all these immodest forms of Nikäh and saved womanhood from these insults and abuses.

04. The Islämic Method of Marriage

The form of marriage prescribed by Isläm is quite simple and easy with regard to expenses. In brief, the Islämic method consists of two adults, man and woman, accepting the marital relationship with each other in front of two witnesses. If either or both of the transactors are minor, then the minor's guardian will have to accept the Nikäh contract. According to Hanafis, if the girl is adult, it is preferable for her guardian to undertake the proposal and acceptance of Nikäh in the congregation. However, if the girl does it herself, it is sufficient on account of the Holy Prophet's ﷺ Hadïth: "A husbandless woman has more right on herself than her guardian." On more than one occasions, the holy Quran has associated Nikäh with the woman herself. The holy Prophet ﷺ himself married Hazrat Umme Salamah رَضِيَ اللّٰهُ عَنْهَا when she had no guardian. Thus, this is what the general rules and principles of the Sharï'ah demand. No doubt, marriage is a contract,

and the Sharï'ah has considered woman independent in all kinds of contracts and transactions.

Nevertheless, the natural demureness of the woman demands that while her inclination and consent should be the decisive factor, the responsibility of actual proposal or acceptance should not be laid upon her. The Sharï'ah, therefore, prefers the mediation of the guardian (Walï) even on behalf of an adult girl. This is what the Hadïths prescribing and emphasizing the need of a guardian for a woman's marriage imply. Other jurists consider the presence of guardian for a woman's marriage a necessary condition for Nikäh.

When this plain and simple method of Islämic marriage is compared with the methods of marriage in other communities, we get an idea of what a blessing Isläm is.

It goes without saying that Isläm favours announcement and publicity in the matter of Nikäh. Hence the presence of witnesses has been made compulsory and the command for publicizing the marriage has been laid down. Playing of tabour, etc. has been permitted on the occasion of marriage. The Sharï'ah favours holding the marriage ceremony in the mosque where people are accustomed to gather. The command for Walïmah (post-wedding banquet) has also been attached to marriage so that relations, friends and other near and dear ones may get to know of the Nikäh. In our times, however, lavish wedding ceremonies are performed. People come from distant places to participate in the wedding ceremony, wedding processions (bärät) travel from one city to another, the people on the bride-side have to prepare lavish dishes, all relations and kins consider participation in a Nikäh their right, and so on. But, such things are at complete odds with the Sharï'ah. They are undesirable and wrong. In this respect, the only thing that comes under the etiquettes of wedding is inviting some pious people on this occasion in addition to the witnesses.

05. Mut'ah (Marriage for a limited period)

Isläm has not permitted any form of wedding other than this civilized method of Nikäh. None of the other methods of wedding is free from obscenity and immodesty. Of course, in the early days, Isläm had permitted another method of wedding prevalent in the Days of Ignorance: Mut'ah wedding. Mut'ah involved marrying for one or more days on a mutually agreed dower. But later on, the Prophet ﷺ prohibited this as well. According to a Hadïth report, the Prophet ﷺ clearly stated: "Alläh has now made Mut'ah haraam till the Day of Judgement." Hazrat 'Alï رَضِيَ اللهُ عَنْهُ too had firm conviction regarding the prohibition of Mut'ah. He also tried to convince 'Abdulläh bin 'Abbäs on this issue. Some people have attributed the view of Mut'ah's permissibility towards 'Abdulläh bin 'Abbäs. In fact, only in the early days did he hold the view of Mut'ah's permissibility and that too

only in a condition of dire necessity, like the one in which even eating of swine-flesh becomes permissible for a man. However, he later changed his opinion. Thus, there is a consensus in the Ummah now over the prohibition of Mut'ah. Only the Shï'ahs allow this detestable method of sexual relations.

06. Halälah marriage

Similar to the Mut'ah marriage is Halälah: the marriage in which a woman separated from her husband by three divorces is married to another man with the intention of making her lawful-to-wed for her first husband.

In order to admonish the husband and thus minimize the occurrences of triple divorces, the Islämic Sharï'ah has made the woman perpetually forbidden for marriage to the first husband after she has been divorced thrice by him. Such a woman can become lawful-to-wed for the first husband in only one scenario: the woman is wedded to another man, the new couple share the pleasure of sexual intercourse, and then the second husband dies or divorces her. Now she becomes lawful for the first husband as this is apparently an intense blow to the sense of honour of an honour-conscious husband.

Some people have come up with a trick for making the thrice-divorced woman lawful-to-wed for the divorcer. They get the thrice-divorced woman married to a man for a few days. He divorces the woman after consummating the marriage so that she may become lawful for the first husband. The second husband is well-aware at the time of marriage that he is doing this marriage only for fulfilling a temporary need and he has no sincere intention of spending a permanent marital life with her. This form of Nikäh is exactly similar to Mut'ah. The only difference is that in Mut'ah, the transactors expressly declare the Nikäh to be temporary at the time of wedding ceremony itself, whereas in this form of marriage (Halälah) the temporary nature of the marriage is in their hearts, and is not expressly spoken by tongue. Therefore, the Prophet of Alläh ﷺ has expressed such a strong displeasure over this form of marriage that a believer would tremble and shiver at the idea. He has in fact cursed such a person[8].

However, the question remains that if a man does engage in Halälah, will the marriage be valid. The jursits are divided in opinion regarding this. The majority say that the Halälah marriage will be valid and with the consummation of this marriage, the woman will become lawful-to-wed for her first husband. However, the Hanafï jurist Qäzï Abü Yüsuf

[8] لَعَنَ اللَّهُ الْمُحَلِّلَ، وَالْمُحَلَّلَ لَهُ: Alläh’s curse be upon the one who marries a divorced woman with the intention of making her lawful for her former husband and upon the one for whom she is made lawful. (Abü Däwüd 2076)

and the Hanbalï jurists in general consider such a marriage insufficient for making the woman lawful-to-wed for her first husband.

The correct view is the first one. Though such a man (the husband in Halälah marriage) is a grievous sinner and wrongdoer in Alläh's sight and though this act of Halälah is highly condemnable and abhorrent, yet it is sufficient for making the woman lawful for her first man. Even in the above Hadïth, the second husband has been called مُحَلِّل (muħallil: the man who makes the woman lawful) and the first husband مُحَلَّل لَهُ (muħallal lahu: the man for whom the woman has been made lawful). Moreover, there are several instances in Islämic law where an act may be condemnable in its essence, yet the results caused by it nevertheless take place.

07. Purposes of marriage

Now it will be useful to have a look at the goals for which Isläm has not only permitted marriage, but in fact placed it in the list of worships and assigned it a far higher place than any worldly transaction. Due to this high status, a large section of the Muslim ummah holds that marriage and the resulting family-life is preferable over that unmarried life which is occupied with desirable (Nafl) worships. It is a fact that rulings mostly depend upon goals and purposes, so without understanding them, we can never appreciate the system of life based on such rulings nor will we be able to comprehend the details associated with such rulings.

In the eyes of Isläm, the basic purpose of marriage is reproduction as the Qurän has called the woman farmland for the man: فَأْتُوا۟ حَرْثَكُمْ أَنَّى شِئْتُمْ: "Approach your tilth whenever and however you wish."[9] Encouraging the system of marriage, the Prophet ﷺ stressed its role in increasing the population of the Muslim Ummah: تَنَاكَحُوا تَنَاسَلُوا "Marry and produce children." Some traditions especially express the Prophet's ﷺ direction to marry women who are, by nature, more capable of procreating: تزوَّجوا الودودَ الولُودَ "Marry women who are loving and produce more children." Qurän has taught the pious and devout Muslims to beseech Alläh for both wife and children: هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا قُرَّةَ أَعْيُنٍ "Grant us wives and offspring who will be the comfort of our eyes." (Qurän 25:74) all these things clearly demonstrate the Islämic principle that the basic, fundamental and principal purpose of marriage is the growth of human species (in number).

The second important purpose of marriage is preservation of chastity and honour and fulfilment of the psychological desire of a person in a natural way. This is the reason why the Prophet ﷺ has referred to marriage as a part of Faith (Ïmän). He said that marriage protects a person from evil gazes (at stranger women) and from loss of chastity: فإِنَّهُ أغَضُّ

[9] Qurän 2:223

للبصَر وأحصنُ للفَرْجِ “It has a great role in lowering the gaze and safeguarding the chastity of the private parts.” The Quran has termed the married men and women as مُحْصِن muhsin and مُحْصَنَة muhsanah respectively, which means: being fortified. The implication is that by marrying, a person secures himself in a fort of chastity and honour and Shaitän cannot overpower him.

[The third purpose is peace of mind.] It is a part of human psyche that he finds peace and solace in another human being. When he is born, mother’s affection, father’s care and siblings’ love provide comfort to his heart. As he grows, his emotional and sentimental attachment with them starts decreasing. The wife makes up for this (vacuum in life). If he is good and pious, she becomes the source for coolness of heart and comfort of mind. As he grows further in age, the love for children overshadows his love for wife. Nevertheless, it is the wife who remains the real provider of peace, partner in happiness and grief, balm for heart-wounds, and the confidante of public and private life till his death. Therefore, the Quran says: لِّتَسْكُنُوا إِلَيْهَا “that you may live in tranquillity with them” (30:21) and uses the excellent term of libaas to express their mutual relation, stating that the two of you are garments for each other:هُنَّ لِبَاسٌ لَّكُمْ وَأَنتُمْ لِبَاسٌ لَّهُنَّ “They (wives) are your garments and you are their garments.” (2:187) Just as garments are closest to human body, aware of all the secrets, virtues and defects of the body, protecting it from the hardships of weathers and vagaries of climate, so is the role of the wife in a man's life.

A careful thought reveals that all the rules regarding marriage revolve around these three purposes only. The need for 'iddah (waiting period for a woman who has lost her husband), all the rules related to the proof of lineage and all regulations regarding sexual relations are only to ensure the fulfillment of the requirement of growth of human species and to preserve the identity of human race.

The rules like permission to see the fiancée (bride-to-be) before marriage, prohibition of zinä (adultery and fornication), encouragement of sexual relations with wife, directions for honouring the desires and inclinations of each other, permission of one to four wives for men, etc are intended to preserve chastity and honour of the human race.

The due regards paid to the likes of the boy and the girl while contracting their marriage, the consideration of equality between them in important aspects, directions for living with the spouse amiably, command against divorcing, permission of divorce and khula’ (breaking of marital relation by wife) only when hatred has left no place for mutual love and peace, right of the wife to demand separation (at the Islämic court) in case of some particular diseases and disabilities (of the husband), and many other rules of this type are there to maintain the atmosphere of mutual love and peace between the spouses, and help to strengthen it.

Some religions of the world have made marriage such an unbreakable relation that its hollow walls have to be maintained even if they stand over the foundation of hatred. On the other hand, the modern culture of the debased West considers marriage only a method for fulfilling sexual desires without any intention of procreation, or establishing a world of permanent love and peace, or maintaining chastity and honour through this relation. If we analyze these ancient and modern temples of Jähiliyyah, observe them after peeling off the artificial polish of so-called culture and civilization from their faces and compare them with the natural, moderate and balanced teachings of Isläm, we come to the clear conclusion that Isläm is the only way of life that has based the rules of marriage on fair principles, in pursuit of high goals. Thus Isläm has avoided the extremism of both kinds (too much and too less) in every aspect.

08. Seeing the fiancée (would-be bride)

The Islämic Sharï'ah wants marriage to be a durable relation. So it shuts all doors of instability in the beginning itself. It allows the man to see his bride-to-be. In fact, the Prophet ﷺ encouraged it, saying that the woman to whom proposal of marriage is placed should be first seen.

إذا خطب أحدكم المرأة، فإن استطاع أن ينظر إلى ما يدعوه إلى نكاحها فليفعل.

When one of you sends the marriage proposal to a lady, then if it is possible for him to see that which has invited him to marrying her, he should see it.

It is not necessary for the groom-to-be to take prior permission from the girl and her guardians. It is sufficient if he sees her in an unnoticeable way. The above quoted report of Hazrat Jäbir itself mentions that he had proposed to a woman and saw her from a hiding-place. The groom-to-be can also see her by permission. Hazrat Umar رضي الله عنه had seen Umme Kulthüm bint 'Alï with her father Hazrat 'Alï's permission only. Nevertheless, it appears that it would be more suitable to see her unnoticeably (without letting her know) as rejecting a relation proposal after seeing the girl may have an adverse impact on her psyche. Instead of seeing the fiancée himself, if the fiancé gets other women of his family to see her and relies on their information, that too would be enough. However, as already mentioned, the boy may see the fiancée himself. In India, people consider this indecent which is incorrect.

Only the face, hands and general appearance and stature of her well-covered body can be seen by the groom-to-be. If the women are seeing, then in accordance with the general rules and regulations of the Sharï'ah, they may see the parts of the fiancee's body other than that between the navel and the knees, as and if need be. However, it is essential for the boy to see only with the intention of marrying, not with the intention of evil-gazing

(seeing a stranger of the opposite sex to satisfy one's lust). If the fiancé is seeing with the intention of marrying her, then it is permissible for him to see her even if he fears getting sexually excited at the time , as it is a necessity admissible in the Sharï'ah. The licentiousness of the Western culture has spread this slogan also that before marriage, the couple should spend some time together and maintain relations of mutual love and affection. But Isläm considers this act of perversion as prohibited and a big sin. Isläm's view-point is that it is not permissible for an unrelated pair of man and woman to even meet in loneliness. The reason being that such an act is clearly a cruelty to the woman and violation of her honour. If this experiment of living together leads to the experiment of sexual relation and if the marriage does not come to fruition, then the woman alone will have to bear the burden of the result of this sexual relation (the baby in her womb).

09. Proposal upon proposal

[Mahr (translated as dower here): obligatory bridal-money given by the husband to his wife at the time of marriage.]

With regard to the marriage proposal, the Prophet ﷺ has also directed that one should not propose to a woman if another man has already proposed to her (لا يخطب بعضكم على خطبة أخيه.: None of you should make a proposal after a brother's (any Muslim) proposal.), as this leads to competition, jealousy and acrimony. This applies to the situation when the bride's people have shown interest in the former proposal. If they reject the proposal or if they show no inclination or interest in the proposal, then another person can propose to the girl. Though the proposal of marriage can be made either by the boy or the girl, it would be better if the boy initiates it. To most of the Sacred Wives, the Prophet ﷺ himself had made this proposal. The practice of the Sahäbah was also according to this, though there are a few instances of the opposite too. The girl making a marriage proposal apparently seems to violate her natural bashfulness whereas search for a wife by the man is completely in accordance with his supervisory role and relative superiority in the conjugal life.

10. Criterions for accepting a proposal

What criterion should boys, girls and their guardians take into consideration while selecting a marriage-proposal? The Prophet ﷺ has shed light on this aspect also. The holy Prophet ﷺ said that if you get the proposal from a person whose religious life and moral conduct satisfies you (من ترضون دينه وخلقه), then accept it, or else evil and mischief will spread.

Another Hadïth says, "Women are usually married for four reasons: wealth, family-status, beauty, and piety. Attain success by marrying the pious." (The Prophet ﷺ teaches

the preferability of the criterion of piety over others.) Therefore, it is permissible to make beauty the criterion, as also other desirable attributes to which men feel natural inclination – which the holy Qurän suggests with the words of "marry women of your choice (4:3)" (فَانْكِحُوْا مَا طَابَ لَكُمْ مِنَ النِّسآءِ). Nevertheless, the preferable way is to make the religious and moral life of the boy and the girl the principal criterion in marriage. 'Allämah Käsänï says:

وعندنا الأفضل اعتبار الدين والاقتصارُ عليه.

According to us, the desirable way is to make the religious life the sole criterion.

11. Equality

In some narrations reported from the holy Prophet ﷺ, there is a direction for taking equality of status into consideration while deciding about a marriage proposal. In general, the Hadïths which are mentioned in this regard are weak and unreliable. However, the Islämic jurists have mentioned equality in a total of nine respects, to be considered:

(1) parental lineage(2) being free or slave

(3) being a Muslim from several generations or being a new convert

(4) religiousness and piety(5) wealth and economic status

(6) family status(7) occupation and profession

(8) being free of physical defects(9) intellect and wisdom

However, in reality, the actual basis to be considered is religiosity and moral character only.

Paying much importance to lineage and family status violates the noble Islämic principle of equality and brotherhood. The Prophet ﷺ said: Alläh has ended the distinctions of the Days of Ignorance and pride over ancestors. A human is now either a pious believer or a wretched sinner. The Prophet ﷺ and his noble companions have given the example with their own acts. The Prophet ﷺ married his cousin Zainab with his freed slave, Zaid bin Häarithah رضي الله عنهما and later Hazrat Zaid's son, Usämah with Fätimah bint Qais who belonged to the noble Quraish tribe. He got Zabbä'ah bint Zuhair bin Abdul Muttalib married to Miqdäd bin Aswad. The Prophet also said that I have conducted the marriages of Miqdäd and Zaid to ensure that good conduct alone becomes the criterion for social status: ليكون أشرفَكُم عند الله أحسنُكم خُلُقًا (… so that the person with the best conduct among you be (considered) the most honorable with Alläh). Such instances are quite frequent in the Prophet and his companions' lives. Thus, as has been mentioned above, manners of

living, religious condition, piety and conduct are the only things that should be considered while selecting a marital proposal; though keeping in view the human nature, people have been permitted to take family background, profession, economic status and oldness or newness in Isläm into consideration as well.

12. Marriage Khutbah (sermon)

Marriage sermons were delivered even before Isläm, in the Days of Ignorance, but they used to consist of expressions of superbia, ancestral pride and exaggerated praise of forefathers. As Isläm holds nothing to be a basis for pride other than piety, and as it demands from man humility, modesty and effacement in every act of life, and instructs him to praise and glorify God and entreat and beseech Him; so although it let the marriage speech continue, it completely transformed its subjects and details. In its place, Isläm prescribed a sermon that comprises praise and glorification of Alläh, admission and acknowledgement of monotheism and prophethood, the verses of Quirän which draw man's attention towards the serious matters of life and guide him therein. The sermon reported by Hazrat 'Abdulläh bin Mas'üd and Abü Müsä Ash'arï رضي الله عنهما is the following:

اَلْحَمْدُ لِلَّهِ، نَحْمَدُهُ وَ نَسْتَعِيْنُهُ، وَ نَعُوْذُ بِاللهِ مِنْ شُرُوْرِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا. مَن يَّهْدِهِ اللهُ فَلَا مُضِلَّ لَهُ، وَمَن يُّضْلِلْهُ فَلَا هَادِيَ لَهُ، وَأَشْهَدُ أَن لَا إِلَهَ إِلَّا اللهُ وَحْدَهُ لَا شَرِيْكَ لَهُ، وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُوْلُهُ.

اتَّقُواْ اللهَ حَقَّ تُقَاتِهِ وَلاَ تَمُوتُنَّ إِلاَّ وَأَنتُم مُّسْلِمُونَ.

اتَّقُواْ اللهَ الَّذِي تَسَاءَلُونَ بِهِ وَالأَرْحَامَ إِنَّ اللهَ كَانَ عَلَيْكُمْ رَقِيبًا.

اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا. يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ وَمَن يُطِعْ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا عَظِيمًا.

"All praise belongs to Alläh. We glorify Him and seek His help. We seek Alläh's protection from the evils of our spirits and our sinful acts. Whom Alläh guides, none can mislead and whom He lets go astray, none can guide. I testify that there is no god but Alläh, the One, Who has no partner, and that Muhammad ﷺ is His servant and prophet.

Fear Alläh as He should be feared, and die not except in a state of Isläm.

Revere Alläh, through whom you demand your mutual (rights), and (revere) the wombs (that gave birth to you): for Alläh ever watches over you.

Fear Allāh, and (always) say a word directed to the Right: that He may make your conduct whole and sound and forgive you your sins. He who obeys Allāh and His Messenger, has already attained the highest achievement."

Generally, this speech has been referred to as Khutbatul Hājah (the sermon of necessity) or Tashahhudul Hājah (Testimony of Hājah) in Hadīths. This implies that this sermon can be recited at the time of any necessity. But a report in Baihaqi clearly mentions wedding: إذا أراد أحدكم أن يخطب لحاجة من النكاح أو غيره... (When anyone of you wants to say a speech on the occasion of wedding or some other need, (then recite this sermon).) This indicates that this sermon should be recited particularly on the occasion of a wedding ceremony. It has been the custom of our preceding pioneers to recite some Hadīths and words of prayer after the above mentioned verses for propitiousness.

13. Etiquettes and desirable acts

Among the desirable acts and etiquettes of marriage is the public announcement of it. The Holy Prophet ﷺ said:أعلنوا هذا النكاح (Make the marriage public). Another Prophetic custom is to do the ceremony in a mosque. The Holy Prophet ﷺ said:واجعلوه في المساجد (Do it in mosques.) Although no point of time is inauspicious in Islām, but as the Prophet's ﷺ wedding to Hazrat 'Āishah رضي الله عنها and her first meeting with groom both took place in the month of Shawwāl, some scholars say that marriage in Shawwāl is desirable. In some regions, people consider the months of Muharram, Safar and Zul Qa'dah inauspicious and unsuitable for marriage. This is totally against Islāmic teachings and runs contrary to Islāmic concepts. Scholars have also written that the desirable and preferable day for marriage is Friday.

14. Throwing up dates

Throwing up dates and sugar-candies in marriage assembly for people to collect is common in our regions. Without doubt, the throwing up of dates among the people present and their collecting them, by themselves, are permissible and allowable, and the dates thus obtained won't come under "eating the prohibited". But as this may lead to shoving and even fisticuffs, so Imām Mālik, Imām Shāfi'ī and according to one report, Imām Ahmad forbid this. According to Imām Abū Hanīfah and some other scholars, it is not undesirable. A report from Imām Ahmad also concurs with this.

The scholars who call this permissible base their view on the fact that the Prophet ﷺ slaughtered five or six she-camels and announced that whoever likes may cut off a piece from the she-camel من شاء اقتطع. This permission and permission of collecting from thrown up objects apparently belong to the same class. Some scholars have presented the case of a Helper's (Ansārī's) marriage for the permissibility of throwing up of dates, in

which the Prophet ﷺ himself had thrown up dry fruits. But actually, presenting this tradition to support this is not just, because the chain of narrators for this tradition includes Bishr bin Ibrähïm about whom scholars of Hadïth say that he used to fabricate Hadïths.

Nevertheless, whatever has been mentioned above is enough to prove the permissibility of throwing up of dates. Moreover, it's a common experience that in such ceremonies, jostling, shoving and melee do not arise. Only the expression of delight is intended with this. Fatäwä 'Älamgïrï also quotes the permissibility of throwing up of sweets, dirhams (coins), etc. on such an occasion. Of course, if it is feared that this may lead to disorderly behavior and indecorum in the assembly, then distributing would be preferable.

15. Complimenting the couple

How to say the words of compliment after the marriage has also been taught by the Prophet ﷺ. Hazrat Abü Hurairah رَضِيَ اللہُ عَنْہُ narrates that the Prophet ﷺ used to compliment after the marriage in these words: بَارَكَ اللهُ وَبَارَكَ عَلَيْكَ، وَجَمَعَ بَيْنَكُمَا فِيْ خَيْرٍ (May Alläh grant you propitiousness! May he bestow you with auspiciousness and gather both of you in well-being!) The tradition reported from the Prophet ﷺ by Hazrat 'Aqïl bin Abü Tälib has these words: بَارَكَ اللهُ فِيْكَ وَبَارَكَ لَكَ فِيْهَا (May Alläh grant propitiousness upon you and may He make her auspicious for you.)

16. Duff (tabor)

As publicity and announcement are aimed at in marriages, the Prophet ﷺ has permitted playing tabors (a small drum with one head of soft calfskin). The Prophet ﷺ said: واضربوا عليه بالدفوف (Play tabors on this occasion.) In fact, he did not prohibit girls playing tabors on occasion of an 'Ïd also. Though in later days, in view of the situation of the times, the opinions of scholars regarding the permissibility or impermissibility of tabors, became varied. However, most of the jurists are inclined towards its permissibility. This has been quoted from Imäm Abü Yüsuf , and Hanbalïs and others also hold similar view. But it must be born in mind that the evil customs of singing, playing music, flutes, clapping, playing tablas, singing of women in an assembly, etc. that have become prevalent in our regions are completely impermissible and prohibited. And to shut the doors for these anti-Shari'ah customs in our times, it is necessary to declare tabor also as prohibited.

17. Seeing off the bride

Adorning of the bride by women after the marriage ceremony (marriage sermon, proposal and acceptance) and then taking her to the groom's house in the company of women (called zifäf) is permissible. This finds mention in one of Hazrat 'Äishah's reports. The Islämic jurists have also termed it permissible provided no religious impropriety is

carried out. But as the assembly of women which involves veillessness and anti-Shari'ah acts is not free of religious impropriety, hence it will not be permissible in our times.

18. Walïmah (Post-consummation feast)

[consummation = The completion of marriage by sexual intercourse]

As marriage is the permissible method for fulfilling human desire, the Shari'ah has encouraged maximum publicity and announcement for it. One of the methods for this publicity is Walïmah (post-consummation party) in which the conjugal relationship between man and woman is declared through a general feast. The Prophet ﷺ has himself given banquets and also encouraged his Companions to organize the Walïmah. When Hazrat 'Abdur Rahmän bin 'Auf رضي الله عنه married, he ﷺ directed him to hold Walïmah, saying: أولِم ولو بِشاة (Organize Walïmah, even if with only one goat.) Thus Walïmah is one of the traditions of Alläh's Prophet ﷺ.

What types of dishes should be cooked in a post-consummation feast: this depends on the financial condition of feast-organizer. While the Prophet ﷺ slaughtered a goat on the occasion of his marriage with Hazrat Zainab bint Jahsh , he held the Walïmahs for some of his holy spouses with just a small quantity of barley بمُدَّين من شعير (equivalent to 1.6 kg). This clearly indicates that the type of feast corresponds to a person's financial condition. Too much lavishness in Walïmah and spending more than one's economic status is not desirable in Shari'ah.

Walïmah should take place after conjugal (sexual) relationship is established. In one report, it is clearly mentioned that when the Prophet ﷺ had had night relationship with Hazrat Zainab رضي الله عنها, he invited the people and they ate at the feast. Great emphasis has been laid on accepting Walïmah invitation in Hadiths. Ibn 'Umar رَضِي اللهُ عَنْهُمَا narrates that when a person is invited to Walïmah, he must come for it. In some reports, the non-acceptance of Walïmah invitation has been termed disobedience (of Alläh) and sin. 'Allämah Ibn Abdul Barr quotes Imäm Mälik, Abü Hanïfah, Shäfi'ï etc to be holding the view that accepting Walïmah invitation is compulsory, provided that the person is invited specifically. But the correct view is that the acceptance of the invitation to this feast is Sunnah:وقالت العامة: هي السنة (The majority say: it is Sunnah). However, much emphasis and importance has been laid to this feast in Shari'ah. If a non-Muslim invites for such an occasion, then attending it is permissible. If acts which are impermissible in the view of the Shari'ah are being done in a Walïmah, then one should not attend it. In this respect, the principles for general feasts hold in the case of Walïmah too and they have been mentioned before.

The Prophet ﷺ has called Walïmah on the first day after consummation "rightful" (haqq), on the second day "correct" and on the third day ostentation (show-off). Hence, organizing Walïmah for continuously two or three days or more is undesirable and avoidable. But if flaunting of wealth is not the intention, the people to be invited are many and each person attends Walïmah on only one day (the people attending the Walïmah on the subsequent days are different), then organizing Walïmah for two or more days is also permissible. According to Hazrat Anas' report, the Prophet ﷺ organized Walïmah for three days on the occasion of his marriage with Hazrat Safiyyah رَضِيَ اللهُ عَنْهَا. Hazrat Hafsah bint Sïrïn reports that her father organized Walïmah for seven consecutive days and invited different Sahäbah on different days. Our Hanafï jurists recommend Walïmah on the day after or the second day after coming together of the couple. They also say that Walïmah will not be valid after that.

19. Mahr (dower)

[Mahr: obligatory bridal-money given (or promised to be given) by the husband to his wife at the time of marriage.]

To demonstrate the high status of human modesty in marriage (in the unlawful sex with mutual consent, one is deprived of this high status), the Shari'ah has given an economic right to the wife which is called mahr (dower). (The transaction of money in the form of Mahr makes it a solemn affair which cannot be made and revoked at will.) In Hadïths, this has been referred to as "sadäq" on some occasions and with some other names also. Alläh says that women should be given their dowers with a willing heart وَآتُواْ النَّسَاء صَدُقَاتِهِنَّ نِحْلَةً (Qurän 4:4). In fact, because of this mahr only, the woman's privates becomes permissible for the man by way of the special contract of marriage: وَأُحِلَّ لَكُم مَّا وَرَاء ذَلِكُمْ أَن تَبْتَغُواْ بِأَمْوَالِكُمْ (All other women are lawful, provided you seek (them in marriage) with mahr – 4:24) While the natural qualities and special attributes of man is a reason for the relative superiority of the husband over the wife in marital relation, the fact that mahr and other financial responsibilities have been laid upon the shoulders of the husband also plays a part:الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاء بِمَا فَضَّلَ اللّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنفَقُواْ مِنْ أَمْوَالِهِمْ (Men are the protectors and maintainers of women, because Alläh has made one of them to excel the other, and because they spend (to support them) from their means – Qurän 4:34).

20. Amount of Mahr

[Mahr: obligatory bridal-money given (or promised to be given) by the husband to his wife at the time of marriage.]

As for the maximum limit, the Qurän itself has expressed clearly that there is no upper bound for it (Qurän 4:20). It is established regarding Hazrat Hasan bin 'Alï that when he

married a lady, he sent to her 100 female slaves and 1000 dirham along with each female slave. Regarding the lower limit, the Islämic jurists vary in opinion. Some say that there is no lower limit too while some others feel that the minimum amount of mahr is ¼ dinär (1 dinär=about 4.25 gram of gold). According to Imäm Abü Hanïfah, the minimum amount of mahr is 10 dirhams (1 dirham= nearly 3 gram of silver). All these jurists have proper arguments in favour of their views. The Hanafïs base their opinion on the Hadïth which says that mahr should not be less than 10 dirhams: لا مهر أقلَّ من عشرة دراهم.

There must be moderation in determining the mahr. It should neither be too low that the mahr loses importance, nor should it be too high that it becomes difficult for the man to pay, being beyond the financial state of the husband. Hazrat 'Umar رضي الله عنه has expressed strong dislike for too high mahr saying that if high mahr could be the reason for a woman's pride and high status, then the mahr of the holy wives of the Prophet ﷺ would have been much higher (as they hold the highest status among all Muslim women till the Last Day). In general, the mahr of the holy wives used to be 500 dirham and that of the Prophet’s daughter Hazrat Fätimah was 480 dirham. In contemporary units, 500 dirham is equivalent to 1530.9 gram of silver [=Rs. 66,352 on 09 Dec 2013]. Obviously, keeping the mahr in this quantity is preferable. In the times of the Prophet ﷺ, the mahr of the holy wives and the Prophet’s daughters used to be determined in terms of gold and silver. Thus, determining the mahr in terms of gold or silver, instead of rupees and paise or any other commodity, is closer to the Prophet's tradition and also just to the woman, as [mahr is frequently paid many years later and] the value of currency goes on decreasing day by day. Thus the mahr that has been determined in terms of currency loses much of its value after a period of time.

[Note: To avoid confusion, the translator has omitted the author's original conversion of dinärs and dirhams to the old units of tolas and mäshas.]

21. Rules related to Mahr

[Mahr: obligatory bridal-money given (or promised to be given) by the husband to his wife at the time of marriage.]

If mahr is not specified at the time of marriage ceremony, the marriage is valid as is clear from the Quränic text itself (Qurän 4:4). But the desirable way is to specify the mahr at the time of marriage contract itself. The rules pertaining to different kinds of women are the following:

1. If mahr has been specified at the time of marriage contract, and the man has had seclusion (generally, equivalent to sexual intercourse) with the woman, then it will be compulsory for the man to pay the full specified mahr.

2. If the mahr has been specified at the time of marriage contract but the couple separated before seclusion, then it will be compulsory for the man to pay half of the specified mahr.

3. If the mahr was not specified at the time of marriage contract, but the couple have had seclusion, then the prevalent mahr will be compulsorily due upon the husband. Hazrat 'Abdulläh bin Mas'üd gave such a verdict in favour of a woman and Hazrat Ma'qil bin Sinän endorsed this, saying that the Prophet ﷺ also had given a similar verdict for Birwa' bint Wäshiq رضي الله عنهم. The prevalent mahr means the general mahr of those women in the wife's family and relations who are similar to her in age, wealth, beauty, intellect, conduct and virginity.

4. If neither was the mahr specified nor did the couple have seclusion and divorce took place, then Mut'ah will be compulsory upon the husband. The amount of Mut'ah is not fixed. It depends on the financial status of the husband and how much he can afford: عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ (The rich (should give) according to his means, and the poor according to his means – 2:236).

As for the minimum amount of Mut'ah, varied opinions have been quoted from our preceding pioneers and all these views are based upon deduction and inference. Ibn 'Umar said that at least thirty dirham or any commodity of this value should be given. 'Abdulläh bin 'Abbäs held the view that normally a slave should be given; if the man wants to give less, then a garment should be given; if he wants to give still less, then at least some money for day-to-day expense should be given. Hasan Basarï and Imäm Mälik also hold this view. Hazrat Hasan رضي الله عنه had given his wife 20 ziqäq (or bags) of honey as Mut'ah. Qäzï Shuraih had given his divorced wife 500 dirham as Mut'ah. Imäm Abü Hanïfah's teacher Hammäd held the view that the divorced woman should be given half of the mahr prevalent in the woman's family and relations. However, the famous view among Hanafïs is that the minimum quantity of Mut'ah is one pair of garments. There is no maximum limit for Mut'ah.

It is desirable to give mut'ah to even the woman with whom the man has had enjoyment (intercourse) in addition to the mahr. This is a way of fulfilling the implication of the Quränic injunction that the rule of amicable conduct should not be dispensed with even while separating from the wife: فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ (Either you retain her on reasonable terms or release her with kindness – 2:229).

22. Importance of the payment of mahr

Mahr holds great importance in Isläm. Quarän has counted its payment among the duties of the husband: فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً (Give them their Mahr as a duty – 4:24). From Hadïths, we come to know that if the husband is unable to pay the complete Mahr at the

time of the marriage contract, then he should pay at least a part of it to the wife before intercourse. When Hazrat 'Alī married Hazrat Fātimah, the Prophet himself emphatically directed him: يا علي لا تدخل على أهلك حتى تُقدِّم لهم شيئا (Ali! Present something to your wife before you meet her in seclusion.)

The thinking that Mahr should be paid by the husband only at the time of separation or paid from his inheritance on his death is a totally un-Islāmic and Ignorant-like concept. Like other compulsory dues, Mahr is also a due, so the husband should unburden himself as soon as possible by paying the Mahr.

Unfortunately, many youths in our society consider the specification of Mahr a mere ritual, and do not even intend to pay it. This is a grave sin. The Prophet said that if a person specifies Mahr (in the marriage contract) but does not intend to pay it, then he is an unlawful copulator (adulterer / fornicator). According to some reports, he will be presented before Allāh on the Day of Judgement as an unlawful copulator. The Qurān says that if the husband has paid the Mahr and then the couple have to separate, even then the husband should not resort to any trick to get Mahr back from the wife. Wish that these warnings and the Prophet's directions helped in enflaming the sparks of feelings and awakening the conscience of people who are so fearless of Allāh.

23. Practice of dowry

The unfortunate practice of dowry which has become an inseparable part of marriage in our society is completely unjust in addition to being un-Islāmic. The Shari'a has laid the responsibility of all kinds of expenses in matters of marriage upon the shoulders of men and has called this the basic reason for man's supervisory position in the conjugal relationship: الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاء بِمَا فَضَّلَ اللّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنفَقُواْ مِنْ أَمْوَالِهِمْ (Men are the protectors and maintainers of women, because Allāh has made one of them to excel the other, and because they spend (to support them) from their means – Qurān 4:34)

Therefore, Mahr, day-to-day expenses, garments and clothing, medicine and treatment, and other necessaries like Walīmah and financially supporting the children are all responsibilities of men. So we have the ruling in books of Islāmic law (jurisprudence) whether the extra money demanded by bride's people from the bridegroom is permissible or not and whether it should be considered bribe or not. As for the demand from the bridegroom in the name of dowry, ghorā jorā and tilak (synonyms for dowry), there is probably no mention in the books of Islāmic jurisprudence. In the eyes of the Islāmic jurists, there was no conception of such shameless beggary by men.

It is wrong even from the angle of equality between one's children, which is compulsory. Giving the daughter a huge amount of money and numerous dowry items while depriving

the son from a similar gift is blatant injustice contrary to the principle of fairness. Actually, this custom has been imported to the Muslim society from our compatriots, the Hindus. Since, there is no notion of inheritance for daughters in the Hindu religion – in fact, the daughter's relation with her family gets cut off with the marriage contract itself – , they used to send their daughter with some gifts while seeing her off as bride. On the other hand, in Isläm, the relation of the daughter remains intact even after marriage and she has right in the inheritance as well.

It is true that some reports mention the Prophet ﷺ giving some important household commodities to Hazrat Fätimah (at the time of her marriage):

جهز رسول الله ﷺ لفاطمة في خميل وقربة ووسادة حشوها إذخر.

(The Prophet ﷺ gave (his daughter) Fätimah رضي الله عنها a mattress, an earthen jar and a pillow filled with izkhir grass as gift.)

But calling this dowry in our prevalent sense is wrong because of several reasons. First, it is probable that the Prophet ﷺ had got these things made out of the money obtained by Hazrat 'Alï (Hazrat Fätimah's husband). On the Prophet's command, Hazrat 'Alï had sold his armour for the expenses of this occasion.

Second, the Prophet was not only Hazrat Fätimah's father but also Hazrat 'Alï's guardian and patron. He had been taking care of him right from Hazrat 'Alï's childhood days through his youth days. At this time, Hazrat 'Alï had no separate house (having left back all his properties and possessions in Makkah), nor the necessary commodities for a house. So as the patron and guardian of the couple, the Prophet ﷺ provided for all the commodities necessary for setting up a living home. So this was not a dowry for Hazrat Fätimah. It was only a provision for setting up a new home by the Prophet ﷺ who was the patron and guardian of each of the couple. It is necessary to take this interpretation as the holy Prophet ﷺ had daughters other than Hazrat Fätimah, about whom there is no established report that the Prophet gave them anything (for their marriage). Thus, if we accept that the Prophet gave Fätimah something as dowry, then it is evidently against fairness (among offspring) which is a distant possibility for the Prophet who had been blessed with the highest standard of character.

24. Sexual relation

The Prophet of Isläm has shed light on all aspects of human life and provided guidance in all those fields through his noble model of conduct. The Prophet ﷺ did not leave even the private matters in dark. He rather blessed them with his light of guidance just like the public matters. He laid down civilised and genteel rules for sexual act in conjugal life. The Prophet instructed that this formula should be recited before intercourse: بِسْمِ اللهِ اللّٰهُمَّ

جَنِّبْنَا الشَّيْطَانَ وَجنِّبِ الشَّيْطَانَ مَا رَزَقْتَنَا (In Allāh's name. O Allāh! Protect us from Satan and also protect our would-be offspring.) The Prophet said that if the woman becomes pregnant due to that intercourse, the baby would be safe from Satan's evil effects. The purpose is that the Muslims should remember Allāh's Being even in that condition and should have the intention of obtaining offspring while being hateful of Satan. This sexual act should not be merely to satisfy one's bodily lust.

25. Etiquettes

One should not face the Qiblah during sexual intercourse. Qiblah is the direction of the Holy Ka'ba at Makkah. Hazrat 'Amr bin Hazm and 'Atä have called this posture detestable: لا يستقبل القبلة حال الجماع (One should not face the Qiblah at the time of intercourse.) There should not be much conversation at that time: ويكره الإكثار من الكلام (Talking much is detestable.) as this is what demureness and modesty demand. It should take place in a completely veiled place where none should be able to see or even perceive the sound. No one should be able to see even the early stages of kissing and fondling[10]. The secrets of this private act should not be revealed to others later on too. The Prophet صلَّى الله عليه و سلَّم said that he is the worst man who goes to his wife and the two come in mutual contact, then he reveals the secrets of this act to others[11]. While commenting on the Hadïth, Imäm Nawawï has written that it is prohibited to narrate to others the mode of intercourse, the methods of deriving pleasure from each other and the words and acts of the woman during the act[12].

It is desirable to arouse the woman's desire completely through foreplay before intercourse. The Prophet صلَّى الله عليه و سلَّم used to kiss Hazrat 'Äishah and suck her tongue. Hazrat Jäbir bin 'Abdulläh relates that the Prophet has suggested avoiding intercourse before foreplay[13]: نهى رسول الله صلَّى الله عليه و سلَّم عن المواقعة قبل الملاعبة.

Moreover, the couple should be considerate towards each other during intercourse. The Prophet صلَّى الله عليه و سلَّم said that if the husband calls the wife for this act and she refuses, the angels keep on cursing her till the morning[14]. Likewise, the husband has been asked not to have intercourse with the wife till she is also aroused as much as himself, or else he may have completed the act while her fire of desire is yet to get extinguished. If the husband has completed the act, he should not part away instantly, rather he should remain there for some more time to satisfy the woman[15]: فلا يعجلها حتى تقضي حاجتها. If too frequent

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[10] Al Mughni 7/228 – Chapter of etiquettes of intercourse.
[11] Muslim 1/464 Chapter of the prohibition of revealing the wife's secrets.
[12] Nawawi's commentary of Muslim 1/464.
[13] Zaadul Ma`aad 3/173, Chapter of the Prophet's practice during intercourse.
[14] Bukhaari, Chapter: when the woman spends the night separately.
[15] Al Mughnee 7/228.

intercourse is harmful for the woman's health, then it should be done only as much as is bearable to her[16]: لو تضررت من كثرة جماعه، لم تجز الزيادة على قدر طاقتها.

It is permissible for the couple to touch each other's genitalia and other sexually exciting organs. In fact, it is reported that Imäm Abü Hanïfah says that I hope that a person will be rewarded by Allaah for this[17]: أرجوا أن يعطى الأجر. Getting completely naked during intercourse is not proper as it goes against demureness and modesty. The Prophet صلّى الله عليه و سلّم said that you should not become completely naked during conjugal relations (intercourse)[18]. However, this is only a moral suggestion. As per the rules, it is permissible for the husband and wife to see the entire (undressed) body of each other. In fact, it is reported from Ibn 'Umar that the couple should see each other's genitalia for increasing the enjoyment[19]. This quote of Ibn 'Umar does not contradict the above mentioned Hadïth (as the Hadïth describes what is morally preferable, it is not a binding ruling). The real purpose of intercourse is to keep the husband chaste (from women other than the wife). If a person's desires are not satisfied without this, then certainly, it will be preferable for him to do this.

26. Important directions

Keeping in view the disparities in human nature, dispositions, ways and desires, no particular method of intercourse has been specified. It has been left to each person's individual desires and likings: نِسَآؤُكُمْ حَرْثٌ لَّكُمْ فَأْتُواْ حَرْثَكُمْ أَنَّى شِئْتُمْ (Your wives are like a farmland for you; so approach your farmland when or how you like. – Qurän 2:223). In other words, the wife is a farmland of procreation for you, so you can have intercourse with her in any posture you like: standing, sitting, lying or any other position, from the front or from behind or in some other orientation[20]. Nevertheless, there are some directions also.

First, the unnatural path i.e., the anus should not be used for intercourse with the wife. There is a subtle hint towards this in the Qurän itself. The wife has been termed farmland in the Qurän and clearly the harvest in the form of offspring is possible only when the woman is copulated in the natural path i.e., the vagina. Numerous Hadïths have been reported which prohibit this sodomy. The Prophet صلّى الله عليه و سلّم said, "Allaah will not cast His merciful Eyes on the person who copulates with a man or woman in the hind-path (anus)[21]. Imäm Nawawï says that all notable and significant scholars are unanimous

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[16] Durre Mukhtaar, Chapter of division of turns among wives.
[17] Khulaasatul Fataawa 4/367, Chapter of undesirability, Sixth sub-chapter: Marriage and intercourse.
[18] Ibn Maaja, narrated by `Utba bin `Abd Salami, Chapter on concealing the body during intercourse 1/138.
[19] Raddul Muhtaar 5/234, Sub-chapter on viewing and touching.
[20] Tafseer e Maajidi 1/89, published from Karachi.
[21] Tirmidhi 1/148

that copulating with a woman, in the anus is prohibited, irrespective of whether she is pure from menses or undergoing menses[22]. The permissibility of anal intercourse that has been reported from some pious pioneers is just a misunderstanding. The act which those pioneers have called permissible is to copulate with the woman in the vagina but in a posture wherein the man copulates with the woman from behind: فيطأ من الدبر، لا في الدبر (the man may copulate from behind, not in the behind[23]).

Second, the man should not copulate with the wife when she is undergoing menses. Its prohibition is mentioned in the Qurän itself (2:222). A large number of Hadïths have also been reported which forbid sex during menses[24]. The reason for this is obvious. Menses are a kind of filth. The human nature demands that he keep away from this filth. Moreover, copulating during menses also leads to several medical disorders which are mentioned in the books of medicine. Whatever rulings have been mentioned here about the menses also apply to postnatal discharge. In the state of menses, to what extent enjoyment with the wife is permitted and what is not permitted will be found in the books of jurisprudence. The readers are requested to refer to them.

27. Coitus interruptus ('Azl)

One of the cases of intercourse is coitus interruptus or 'azl, i.e., having intercourse in such a way that sperms do not get ejaculated into wife's vagina (but are ejaculated outside). Most of the jurists call it undesirable. The tones of Hadïths in this regard are different. Some suggest prohibition, some suggest permission while others indicate that it is allowed but undesirable. The correct view is that it is not free of undesirability. Shäh Waliulläh Dehlawï, a scholar of Hadïth of high stature and comprehender of the delicate issues of the Sharï'ah, also takes this view.

28. Mode and manner of intercourse

Though the Shari'ah has not defined a particular mode and manner of intercourse, yet some scholars have tried to explain which mode is preferable and which is not. Ibn Qayyim writes that the most advisable mode is man-over-woman. He has made a very subtle argument for this saying that the woman has been called the man's bed. This suggests that the woman should lie below. On the other hand, the Qurän has called the man supervisor (protector and maintainer) of the woman and this supervisory role suggests the man should lie above. Additionally, the Qurän has called the spouses garments of each other. In the man-over-woman mode, the woman takes the place of bed-

[22] Commentary of Muslim 1/463
[23] Zaadul Ma`aad 3/176
[24] Tirmizi, narrated by Abu Huraira, Chapter of the avoidability of copulating with a wife during menses, 1/35; Bukhaari, narrated by `Aaisha 1/44.

sheet and the man takes the position of quilt, and the bed-sheet and the quilt are like garments for each other. This mode also has several medical advantages. On the other hand, the most reprehensible mode is the man lying on his back with the woman over him, as it goes against the natural form and anatomy of man and woman as well as that of all male and female organisms[25].

As has been mentioned above, if the woman is not physically unfit and the man demands intercourse, it is necessary for the wife to obey his order. There is no difference of opinion in the intercourse being rewardable provided it is done with the right intention as the Prophet has called it a charity: مباضعتك أهلك صدقة (Having intercourse with your wife is a charity.) But what if the man copulates with a wife without sexual desire: is it rewardable or not? Imäm Ahmad says that even in this case, it is rewardable as there is intention of obtaining offspring and even if he does not have this intention, it is nevertheless helpful in safeguarding the chastity of his youthful wife[26].

29. Woman's right in intercourse

A question arises that according to the Sharï'ah, is it compulsory for the man to have intercourse when the woman has a desire? The Hanafïs and the Shäfi'ïs are unanimous that the woman has the right of intercourse only once. If intercourse has taken place once, then the woman loses her right to intercourse forever. But, according to Imäm Ahmad, intercourse is the wife's right as well. If the man has no constraint, then it is compulsory for him to meet the demands of the woman's physical desire. This view is more correct. There is a famous incident of similar kind in the time of Hazrat 'Umar's caliphate in which Hazrat Ka'b ordered such a husband to essentially have intercourse with his wife every fourth day. This is what inference also demands because in the other case (the ruling that the woman has a right of intercourse only once in her life), there is great harm to the woman and she falls in danger of losing her chastity (by having sex with a man other than her husband). As far as the contention that intercourse is the right of man alone, not of woman, it does not appear correct from any angle, since both the spouses have a share in all the rights that are conferred through the marriage contract. This is the reason that a man has to take permission if he wants to do `azl with his free (not slave) wife.

According to Imäm Ahmad, it is compulsory for the man to have intercourse with his wife at least once every four months. Ibn Manthoor quotes Imäm Ahmad as saying that if the husband does not copulate with his wife for four months in spite of being ordered to do so by a Shari'ah court, the couple can be separated. If there is some constraint and

[25] Zaadul Ma`aad 2/174
[26] Al Mughnee 7/232.

suitable excuse, e.g. the husband is on a journey, then the woman's right to intercourse will become void. However, if there is no considerable difficulty in the husband's return to home, then the husband will be ordered to return home after the passage of six months. If the husband refuses, then the couple may be separated.

30. Permanently prohibited relations

(with whom marriage can never take place)

While the Islämic Shari'ah gives marriage the status of worship, calls it the custom of the prophets, and encourages it in several other ways, it also specifies suitable limits and conditions for it. Among these conditions, a fundamental one is that the woman to be married should not be among those with whom marriage is prohibited. There are basically two cases of marriage prohibition: (1) permanent and (2) temporary.

In the Shari'ah there are three factors that cause permanent prohibition: (a) parentage (b) in-law relation (c) suckling relation.

Parentage (nasab) refers to those parental relations which have been termed prohibited for marriage in the Qur'aan. They include:

(i)root lineage i.e. mother, father and their complete lineage of parents and foreparents

(ii)branch lineage i.e. sons, daughters and their complete lineage of offspring

(iii)siblings of the person and of the person's parents

(Sura Nisaa': 23).

In-law relation (Sihr) refers to those who are related by marriage. Among them, the root lineage (forefathers and foremothers) and the branch lineage (children and their lineage of offspring) of the spouse are prohibited. There is one detail in this regard that the wife's mother becomes prohibited forever with the marriage contract itself whether the couple has intercourse or not. But the wife's daughter will not be prohibited for the man unless he has consummates his marriage with the wife through intercourse. If the couple separate before consummation, it will be permissible for the man to marry this wife's daughter. (Sura Nisaa': 23).

The basic principle with regard to the suckling relations is that all the root lineage and branch lineage of the suckling mother as well as the suckling mother's husband become prohibited for marriage to the suckling baby. But there will be no prohibition for the siblings and other relations of the suckling baby due to this suckling relation. Thus, the

prohibition of the suckling baby is limited to him and his offspring whereas the prohibition of the suckling mother spreads.

The four Imäms (Abü Hanïfah, Shäfi'ï, Mälik and Ahmad رحمة الله عليهم) are unanimous in all the above rulings. There is a difference of opinion over two issues. According to Hanafïs (followers of Imäm Abü Hanïfah), in addition to marriage, having illegal intercourse with a woman in her natural path (vagina, not anus) or illegal foreplay with a woman without ejaculation also establish prohibition of in-law relations. The root lineage, branch lineage, etc become prohibited for that illegal copulater. But according to the other fuqahaa, valid marriage only establishes prohibition of in-law relations.

The second difference is in the quantity of milk sucked by the baby which establishes suckling prohibition. Hanafïs and Mälikees say that even one swallow (swig) of milk by the baby is enough for establishing suckling prohibition. Shäfi'ïs and Hnbalees feel that there should be at least five swallows for the suckling prohibition to be established. Moreover, the correct and cogent view is that the period for suckling is two years. If the baby sucks milk when he is less than two years old, then only suckling prohibition will be established. If he sucks milk after this age, suckling prohibition will not be established. According to Imäm Abü Hanïfah, the suckling period is two and a half years and sucking milk in this period causes suckling prohibition.

The real reason for making these relations prohibited is known to Alläh alone, however there are a few points which general intellect can also infer.

First, there are some relations who are so close by blood that the human nature refuses to have conjugal and sexual relations with them. That is the reason why the people who claim to be atheists, fearless of Alläh and bowing to their intellect alone, also consider marital relations with mothers, sisters, daughters, daughters-in-law, mothers-in-law, aunts, grandmothers, etc. to be against bashfulness and propriety. In the entire human history, there have been only a few shameless rebels of nature who haven't felt any compunction in felling down even this wall of veil and prohibition. And such people have never and in no community been looked upon with respect.

Second, if there is no wall of prohibition even between such close relations, and marital relations between brothers and sisters, mothers and sons, fathers and daughters, fathers-in-law and daughters-in-law, etc. is made permissible; then it will be difficult for any husband to have faith in his wife's chastity and morality. This prohibition of marital relations prevents the mind from even thinking of such a sexual relation. It keeps a natural wall of veil and bashfulness which helps in maintaining mutual faith and trust. If this veil of prohibition is absent, safety from such immoral relations between young brothers and sisters who live together day and night will be impossible.

Third, modern medical experts have acknowledged the fact that marital relations between very close blood relations may lead to extremely harmful medical conditions and severe forms of diseases, particularly insanity and mental disorders, in the baby born out of this relation.

31. Temporarily prohibited relations

There are some relations with whom marriage is prohibited temporarily. The fundamental principle in this regard is that if the other woman whom the man wants to marry is so closely related to his wife that if one of the two women is considered a man, then he (she) and the other (man's present wife or would-be wife) become so related that marriage between them is prohibited; then the man cannot marry the other woman as long as his marriage with the first wife continues. For example, marrying a woman while her sister, father's sister, mother's sister, brother's daughter, sister's daughter, etc. is the man's (marriage-seeker's) wife, is not permissible. Of course, if the wife gets separated, then the man can marry her relative. The Qurän has prohibited bringing together two sisters as wives while Hadïths prohibit bringing together aunts and niece (father's sister with brother's daughter, mother's sister with sister's daughter) as wives.

The prohibition of bringing together these close relations is for closing the doors of the sin of breaking blood relations. The relations between co-wives is such that it is natural to have mutual hatred, malice and jealousy between them. Where such relations of mutual love, concern and sympathy exist, the Islämic Shari'ah does not want to ignite the fire of relation-breaking and mutual ill-will, and thus bleed to end the existing mutual love and sisterhood.

32. Marriage with a woman from the Scripture People (Ahle Kitab)

According to the Islämic point of view, polytheism and paganism are barriers that become a hindrance in starting a marital relation. The only exceptions are the women from the Scripture People i.e. Jews and Christians whom Muslim men are allowed to marry. The Qurän itself says: وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُواْ الْكِتَابَ مِن قَبْلِكُمْ ((Lawful to you in marriage) are chaste women from those who were given the Scripture (Jews and Christians) before your time – 5:5).

Therefore, it can be said that there is unanimity on the issue of permissibility of marriage with women from the Scripture People. Hazrat Usmaan Ghani رضي الله عنه himself married a Christian woman named Naaila who later converted to Islām. Similarly, Hazrat Talha رضي الله عنه married a Jew woman from Syria.

Now, the question arises whether there is some difference between women from the Scripture People living in Daarul Kufr (Misbeliever state) and those living in Daarul Islām (Islāmic state) with regard to the permissibility of marriage. Hazrat 'Abdullāh bin ``'Abbās completely forbids marrying a woman from the Scripture People living in Daarul Kufr (Misbeliever state). However, majority of the fuqahaa are inclined towards its undesirability. This is also the view of the Hanafi jurists: وأصحابنا يكرهون مناكحات الحرب من أهل الكتاب (Our Hanafi jurists consider marrying a woman from the Scripture People living in Daarul Kufr (Misbeliever country) as undesirable.)

Hazrat 'Abdullāh bin 'Umar considered as undesirable marrying women from the Scripture People living in Daarul Islām (Islāmic state) Ahkaamul Qurān by Jassaas 3/324. In a famous incident, when Hazrat Huzaifa married a Jew woman, Caliph Hazrat 'Umar ordered him to divorce her. This suggests that marrying a woman from the Scripture People even in Islāmic states is not free of undesirability. Therefore, `'Allāmah Shaami writes that marrying a woman from the Scripture People from Misbeliever state is strictly undesirable while marrying such a woman from Islāmic state is simpley avoidable (permissible but nor recommended): (والأولى أن لا يفعل) يفيد كراهة التنزيه في غير الحربية، وما بعده يفيد كراهة التحريم في الحربية.

The reasom for the undesirability of marrying women from the Scripture People is obvious. The strong influence that the wife has on the actions as well as the views and opinions of the husband, the powerful role that the woman plays in the mental upbringing of the children, and the role she has in the general betterment or decay of the society does not need any elucidation. Moreover, the promiscuity and moral anarchy prevailing I the women from the Scripture People and their society too does not need any mention. Therefore, in these conditions, the correct view regarding marrying women from the Scripture People is the following:

1.It is permissible to marry those Jew and Christian women who have faith in the existence of God and the system of prophethood, and are not atheists or dismissive of religion.

2.But this marriage is not free of undesirability. If the marriage happens in Islāmic state, it is simply undesirable and if it happens in Misbeliever state, then it is nearly prohibited.

3.It is not permissible to marry those women who are Christians or Jews only in name, but are atheists and agnostics, in fact.

4.It is also not permissible to marry women who have become Christians or Jews after recanting from Islām.

33. Marriage with a Qaadiaani woman

As for the marriage of Muslim men with Qaadiaani women, it is completely prohibited and impermissible. The Qaadiaanis are not among the Scripture People, in fact they are in the category of Zindeeqs (hypocrite apostates). It will be appropriate to quote what this author has written in reply to an istiftaa (question seeking shara`ee advice).

“It goes beyond doubt that the Shari'ah has divided the Misbelievers into two categories with regard to marital relation and prohibition or permissibility of slaughtered animals: (1) Scripture People and (2) General Misbelievers. Marriage with Scripture People (women) is permitted while that with the General Misbelievers is not. Similarly, the animals slaughtered by Scripture People is permissible for eating while those by General Misbelievers is prohibited. The term Scripture People implies those who have faith in a heavenly divine religion other than Islām and have a religious book whose revelation is confirmed by the Qurān, later distortions and tampering with the text notwithstanding: وكل من يعتقد دينا سماويًا له كتاب منزل كصحف إبراهيم ر الشيث وزبور داؤد عليهم السلام، فهو من أهل الكتاب، فيجوز مناكحته وأكل ذبائحه.

“Thus the matter of the Scripture People and of those General Misbelievers who openly admit their unbelief is quite evident. But the problem arises in the case of people who call themselves Muslims but are essentially Misbelievers on account of their beliefs and doctrines. What category should they be assigned: of Muslims, or Scripture People or General Misbelievers?

“Evidently, they cannot be considered Muslims owing to their Misbeliever-like doctrines, and juristic similitudes indicate that they cannot be categorized as Scripture People as well. So they will be in the category of General Misbelievers: neither will marrying their women be allowed nor eating their slaughtered animals. Islāmic jurists have called such people hypocrite apostates (Zindeeq). Hypocrite apostates have been defined as: هو الذي يظهر الإسلام ويستتر بالكفر وهو المنافق، وكان يسمَّى في عصر النبي منافقا ويسمَّى اليوم زنديقا (He is the person who proclaims to be a Muslim publicly, but secretly persists with Misbelief. He is a hypocrite who used to be termed a Hypocrite in the days of the Prophet ﷺ, and is now referred to as hypocrite apostate (Zindeeq).)

“For the Islāmic state, the presence of Scripture People and open Misbelievers is bearable, but the existence of such hypocrite apostates is intolerable. Therefore, jurists have written that they should be put to death, and the repentance and recantation by open apostates will be accepted but from these hypocrite apostates, even repentance will not be accepted: و قتل الزنديق بعد الاطلاع عليه بلا استتابة، وهو من أسر الكفر وأظهر الإسلام – وكان يسمى في زمن النبي ﷺ وأصحابه منافقا – بلا قبوا توبة من حيث قتله. ولا بد من توبته، لكن إن تاب قتل حدًّا وإلا كفرا.

"The jurists have kept the hypocrite apostate in the category of General Misbelievers and idolaters. Quoting Fathul Qadeer, `'Allämah Ibn Nujaim writes:

ويدخل في عبدة الأوثان والصور التي استحسنوها والمعطلة والزنادقة والباطنية والإباحية، وفي شرح الوجيز: وكلُّ مذهب يُكَفَّرُ به مُعْتَقِدُهُ فهو يحرمُ نكاحُها، لأن اسم المشرك يتناولهم جميعا.

"On account of this, some scholars have called marriage between Ahle Sunna and Mu`tazila as prohibited precautionally: المناكحة بين أهل السنة وأهل الاعتزال لا يجوز: كذا أجاب الشيخ الإمام الرستغفني. Some such sects like Mubayyiza and others have been termed Misbelievers in Fatäwä 'Älamgïrï also. The text of Hazrat Shäh Waliulläh's book Sharh e Muwattaa – in which the indirect rejecters of the fact of the end of prophethood with Muhammad ﷺ have been termed hypocrite apostates (Zindeeqs) – has made the issue quite clear and evident that Qaadianis also come in the category of hypocrite apostates (Zindeeqs) and they will be considered General Misbelievers, not Scripture People as regards the rulings for marriage with their women and their slaughtered animals. This ruling not only conforms to the elucidations of the jurists but is also in sync with the spirit of the Shari'ah which emphasizes that in all such matters, the preservation of Belief (Imaan) comes first. Owing to this, if there is a fear of adverse influence from Scripture People, the jurists have not permitted marrying their women as well."

34. Polygamy

Before Isläm, there was no limit on the number of wives a man could have. Isläm limited it to four and also imposed the restriction that if the man finds himself unable to do justice among the wives, then he should be content with one wife only, and not marry more: فَإِنْ خِفْتُمْ أَلاَّ تَعْدِلُوا فَوَاحِدَةً (If you fear that you shall not be able to deal justly (with them), then (have) only one (wife): Quran 4:3).

Therefore, if a person is not confident that he will be able to maintain equality among all his wives, marrying a second wife is not permitted for him. Sayyid Qutub, the martyr [1906-1966], while quoting the views of the preceding and succeeding scholars, writes:

"If somebody finds himself incapable of maintaining this justice and he fears that he will be unable to do this, then only one wife is permissible for him, more than one is forbidden.

"According to Imäm Ahmad if a wife puts the condition at the time of marriage that the husband cannot marry another woman in his presence, then the husband will have to comply with this condition. If the man marries another wife, the second marriage will be valid but the first wife will have the right to separate from the husband."

It is a reality that in some conditions, for preserving the modesty and chastity of men, looking after widows and orphans and taking care of the greater rate of birth of females, there remains no other solution except permitting men to marry more than one wives. Even unprejudiced scholars of the West have admitted this. The orientalist and expert on Eastern cultures, Dr Gustaoli Vaan writes:

"In the West, the practice of monogamy exists only on paper. I feel that no one will deny that in reality, this practice is not present in our society. I do not know in what ways the lawful polygamy of the Easterners is considered inferior to the unlawful polygamy of the Westerners. In fact, I would say that the former is preferable to the latter in every respect."

35. The vileness of unlawful copulation

[Zinaa: unlawful copulation which includes both adultery and fornication.]

While Isläm confers the status of charity and worship to marriage and the lawful sexual relations taking place due to it, at the same time, it treats unlawful copulation as one of the worst sins. The Qurän has not only prohibited unlawful copulation, it has also called going near to unlawful copulation as immodesty and waywardness: وَلاَ تَقْرَبُواْ الزِّنَى إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيْلاً (Do not come near adultery: for it is a shameful (deed) and an evil way. – 17:32). For women, the Qurän has mentioned some issues on which it is necessary for them to pronounce the oath of fealty (faithfulness to Isläm, bai`a) and the first among them is refraining from this very evil. At another place in the Qurän, the evil has been condemned along with idolatry (assigning partners to Alläh) and homicide (murder). In Hadïths, the state of unlawful copulation has been termed contrary to the state of Belief (Imaan): لا يزني الزاني حين يزني وهو مؤمن (While an unlawful copulater copulates, he is not a Believer.) In a Hadïth, the Prophet ﷺ said that unlawful copulation takes away the attractiveness of one's face and snaps at nourishment (rizq). If a person commits unlawful copulation despite old age, the Prophet said, will never enter the Paradise and Alläh's Eyes of mercy will never be cast towards him. The Prophet ﷺ warned that when unlawful copulation becomes prevalent among some people, they are subjected to famine. He also said that prevalence of unlawful copulation leads to rise in the frequency of deaths: ولا فشى الزنا في قوم إلا كثر فيه الموتُ (Whenever unlawful copulation becomes common in a community, the rate of death increases.) The "death" in the Hadïth probably refers to the appearance of lethal diseases. Nowadays everybody is aware that syphilis (a chronic disease contracted chiefly by infection during sexual intercourse), gonorrhoea (a disease characterized by pussy inflammation of the genital mucous membranes, and consequent pain during urination and discharge), certain types of cancer and a recent cureless lethal disease AIDS are mostly results of this sexual waywardness and perversion only.

Keeping in view the abhorrence of unlawful copulation, Islām has prescribed very serious punishment on it, that is a hundred lashes for unmarried criminals of either sex , and stoning to death for married criminals of either sex. It is a reality that unlawful copulation is such a crime that the entire society has to face its evil consequences. Immodesty becomes common in the whole society. It becomes a source of shame and disgrace not for a man and woman alone, but for two families. The unlawful copulation also amounts to a punishment for the child to be born for a sin not committed by him. It is a rebellion against the law of nature and playing with human nobleness and, above all, it is the disobedience of the Lord of the universe. It is like invoking His displeasure and inviting His anger and wrath: أعاذنا اللهُ منهُ (May Allāh protect us all from it!).

36. The pervert act (sodomy)

An even more disgusting form of sexual perversion is sodomy or homosexuality. It is completely unnatural and an abhorrent and disgusting crime in the eyes of Islām. According to the authentic Qurānic report, Prophet Lot's عليه السلام people were subjected to a severe and terrific divine punishment for this crime only. There was a horrific rain of stones on the land and its surface was overturned. In a Hadīth, the Prophet ﷺ has invoked Allāh's curse upon such a person three times. Hazrat Abū Huraira reports that there are four people about whom the Prophet ﷺ informed that they spend their mornings and evenings (meaning all the time) in a state of Allāh's displeasure and wrath. One among them is the committer of this heinous sin.

Owing to the heinousness of this act, the jurisprudents are confused as to what punishment should be awarded to such a criminal. Some opine that the sodomite be felled down from atop a high hill, some say that the sentence of illegal copulater be enforced on him, some others hold the view that he be awarded death sentence and still others leave it to the conscience of the judge. Upon Hazrat 'Alī's advice, the then Caliph Hazrat Usmaan رضي الله عنهما awarded the punishment of unmarried unlawful copulater, i.e. a hundred lashes to an unmarried sodomite. The Prophet ﷺ himself has instructed that both the sodomite and the sodomized be killed. Most of the jurists are inclined towards sentencing such a criminal to death. However, this punishment belongs to the category of ta`zeer [punishment for the crimes for which the quantum of sentence has not been fixed by Allāh], in which the Shari'ah court has the right to increase or decrease the quantum of punishment on the basis of particular situations and conditions.

The societies where this evil is widespread are being punished severely by Allāh with lethal and deterrent diseases in this life itself. And in addition, they have to face the divine punishment in the Hereafter: إِنَّ بَطْشَ رَبِّكَ لَشَدِيدٌ (Truly, the grip of your Lord is strong – Qurān 85:12).

37. Bestiality (Copulation with animals)

Another similar detestable sexual perversion includes satisfying one's sexual desire with animals (bestiality). In reality, it is an act on which even animality's forehead of modesty becomes wet with sweat. The Prophet ﷺ has severely condemned this act. According to a report, the Prophet has ordered both the bestiality-committer and the animal subjected to bestiality to be killed. However, the jurists have interpreted that this Hadïth is meant only to demonstrate the severity and heinousness of the crime and have called this punishment of death as ta`zeer allowable only, for a habitual criminal. Nevertheless, they are unanimous that such a person deserves punishment. The animal should also be slaughtered and no benefit should be derived from it whether before slaughtering or after. Some Hadïths also mention that the animal should be burnt after slaughtering , but burning is not compulsory. The real purpose is to erase the symbol of this evil (the animal subjected to bestiality). If the animal is not finished off, it will be pointed to (and thus serve as a reminder of this evil). The talk of this evil will spread and the human mind will automatically turn towards the thought of this evil on seeing this animal.

38. Control of sexual waywardness

To stop the unlawful, to safeguard the chastity and honour and to safeguard human modesty and bashfulness, the Shari'ah has undertaken various measures, the first among which is marriage. Other than this, some more precautionary measures have also been taken. Of these, the prohibition of evil gaze (gazing an unrelated woman) and the asking for permission to enter a house hold special importance. The Prophet said that the evil gaze is the unlawful copulation of the eyes. The Prophet said that the genitalia only carries out the confirmation of the highest level, otherwise eyes, hands, feet and tongue all do the unlawful copulation, i.e. aid this act of unlawful copulation. The reason being that the first thought of the evil comes through the eyes. So Alläh has ordered the Believers to lower their gaze: قُل لِّلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ (Qurän 24:30). The same command has been given to the women also, that they should lower their gaze and not reveal their jewellery and ornaments. The Prophet has termed the gaze as a poisonous arrow out of the arrows of the Satan.

If the women step out of the house because of some necessity, then also they have been directed not to show off and display their beauty. They should avoid the central part of the roads and instead use the margins for walking. If they come to a mosque, then they should be in the last row. They should not converse (with unrelated men) in a soft tone. Their voice should not be sweet and appealing to attract the hearts of unrelated men. A woman and an unrelated man should not come together in a lonely place. The Prophet said that in such a condition, the third companion is the Satan: لا يخلون رجل بامرأة إلا كان ثالثهما الشيطان. Actually, all these restrictions are there because the evil of the worst level

(unlawful copulation) does not occur with just one passing of thought. Rather this poison intensifies step by step. First, there is a meeting of sights, then the arrow of sight gets down into the heart and the heart begins to burn with passion. Later, the tongue tears down the cloak of modesty to pieces as it puts forth its request for fulfilling the evil desire. Then the situation of being together at a solitary place further conflagrates the flame of this evil. Meanwhile, the display of jewellery and ornaments, show off like in the Days of Ignorance (whether of the sixth century or of the twenty-first), and the sweetness of speech goes on igniting and aggravating the fire of this evil passion, till one day, matters culminate to the point where the person commits this sin of the severest kind. When the body of a person, particularly a woman, sheds the cloak of modesty once, her lust-seeking and indulgence-craving body never again agrees to wear this cloak. The person who would, till yesterday, blush while raising her eyes and feel uneasy while opening her mouth, today begins to enjoy dancing and saltating in dance-halls, and relish teasing the music-strings of her fans' hearts and playing music on the wires of their spirits. Therefore, the Islämic Shari'ah puts a brake to this evil at the start itself and prevents the spark of this evil from glowing and turning into flame and fire.

39. Masturbation

Masturbation or ejaculation with hands is also a form of sexual waywardness. Isläm views the entire existence of a man and all his capabilities as a trust from Alläh. Alläh's Power has created them for a particular purpose. So whoever makes wrong use of any organ of his body, in fact breaches Alläh's trust and commits the sin of deforming Alläh's creation according to his whims. The sexual capability and the seminal fluid which are present in a human are also not without purpose. They are there to bring about growth and numerical increment of the human race. So any act of sexual perversion whether through masturbation and manual ejaculation, or through sodomy with a boy or with one's own wife is completely contrary to this aim.

So this act is also forbidden and prohibited. The holy Prophet ﷺ said that Alläh will not cast a look (of mercy) at such people. In another narration, the Prophet has invoked Alläh's and angel's curse upon such people. The verses nos. 5 – 7 of Sura Mu'minoon are also put froward to support the prohibition of masturbation. In these verses the permitted ways for fulfilling on's sexual desire have been limited to two only: one's wife and one's slave-girl. Evidently, this is a third way [so it is prohibited]. The Hanafi jurists have called it a punishable offence.

Indulging in masturbation only to satisfy one's lust is not at all permitted. However, if a person is overwhelmed with sexual desire, and so he does this to save himself from unlawful copulation and to calm down his desire, then some jurists write that there is hope that he will not suffer punishment in the Hereafter. In such a condition of

‘necessity’, Ibn ``’Abbäs, 'Abdulläh bin 'Umar, Muhaahid, Hasan Basarï and others رضي الله عنهم are reported to have called it permissible. Manual ejaculation for the purpose of treatment or medical diagnosis also falls under this ‘necessity’ (which makes it permissible). However, all these cases are rare occurrences. Making a habit of it cannot be allowed for any person in any case, as it not only adversely affects the committer’s character and moral and amounts to rebellion against nature, it is also very detrimental to a person’s health.

40. Lesbianism (female homosexuality)

Just as the unnatural act between men (sodomy) is prohibited, so is the unnatural act between women which is called lesbianism or sapphism. The holy Prophet ﷺ said that a woman should not lie with another woman under one sheet (blanket). Hazrat Waasila narrates that mutual indulgence between women is zinaa (unlawful copulation). In another Hadïth, the Prophet has called it a sign of the nearness of the Last Day, that a woman gratifies herself with another woman and a man with another man.

Alläh’s Power has created man and woman as the objects of each other’s sexual requirement and fulfilment. And the purpose of this is also not mere fulfilment of desire; its purpose is the growth of human race and the continuity in existence of the species. Homosexuality hinders the accomplishment of this goal and is a totally unnatural act.

41. Establishment of parentage

Isläm lays immense importance to the preservation and identification of parental lineage as it is one of the most obvious distinctions between humans and animals. For this purpose, it has been made compulsory for the woman to wait for the prescribed period (`idda) after separation from the first husband and before marrying a second husband. The prohibition of unlawful copulation has been made very strict. There can be two cases when a person becomes without filiation (parentage): a person may deny fatherhood to his baby (by saying that I am not his father) or an offspring may associate himself with some other persons than his real parents. The Prophet ﷺ has condemned both these acts. He said that if a person denies fatherhood to his offspring to humiliate him in this world, then Alläh will humiliate him in the Hereafter. One of the Hadïths say that such a father and a son – who denies his association with his real father – are among those whom Alläh will neither talk to, nor purify from sins, nor cast a look of mercy upon (them).

The Prophet ﷺ has laid down the principle that the husband of the woman who gives birth to a baby will be considered the father, and the fatherhood of the unlawful copulater will not be considered: الولد للفِراش وللعاهر الحجر (The baby will be considered to be of the bed-owner (husband of the child-bearing woman) and for the unlawful copulater there is

stone only.). Keeping in view the general temperament of the Shari'ah, the jurists have formulated the rule that all possible attempts will be made to establish the correct parentage of a child and associating a person with unlawful copulation or being the fruit of unlawful copulation will be avoided. Therefore, the jurists have gone to the extreme of caution in determining the maximum period of pregnancy, and some jurists have even gone to the extent of exaggeration. According to Imäm Abü Hanïfah, the maximum period of pregnancy is two years. Thus if the child is born to a woman within two years of her husband divorcing her, then also parentage of the baby is established.

42. Birth through test tube

Contemporary scientific developments and discoveries have made possible some new ways of reproduction. One of them is birth through test tube (test tube breeding). Basically, there are two ways of test tube breeding:

The first is to mix the semen and ovum of a man and woman not married to each other, and thus bring about reproduction. This case is not permissible, no matter the reproductive cells are mixed in a test tube, or in the uterus of the woman herself, or in the uterus of the man’s legal wife. The reason being that it amounts to tampering with the parentage of the to-be-born baby and the actual reason for prohibition of unlawful copulation is this tampering and consequent confusion in parentage only. There are clear texts in this regard. The Prophet ﷺ said: لا يحل لامرئ يؤمن بالله واليوم الآخر أن يسقيَ ماؤه زرعَ غيره (It is not permissible for any person who has faith in Allāh and the Last Day that his water (semen) should irrigate the farm (wife) of someone else.).

The second method is to mix the semen and ovum of a legally married couple and thus bring about reproduction. This can also take various forms [all of which are permissible]:

•The husband’s semen is transmitted to the wife’s uterus through injection, etc.

•The reproductive cells of the husband and wife are obtained, then grown in a test tube for a limited period, and finally transmitted to the wife’s uterus.

•The reproductive cells of the husband and one of his wife’s are obtained, and the mixture is transmitted to the uterus of the man’s another wife, because his first wife is unable to bear the pains of child-labour or is unable to bear a child due to some medical conditions.

This writer (Maulaanaa Khalid Saifullah Rahmani) feels that these cases require masturbation for the husband, revealing of private parts in front of the nurse for the wife, and in a way, application of an unnatural method for pregnancy, yet if the woman is

medically incapable of pregnancy and the couple have strong desire for a child, it can be permitted. This is, after all, a form of treatment and there is scope for leniency in the Shari'ah in matters of medical treatment. Nevertheless, it is better to avoid all these methods.

It goes without question that the father of the baby would be the man whose semen has been used. For establishment of parentage, impregnation of the wife with the husband's sperms (semen) is enough; physical intercourse is not a requirement. As for the case when the ovum of the man's one wife is taken and the mixture of the semen and ovum are grown in the man's another wife and the other wife bears the labour-pain, then apparently, this other wife should be considered the baby's mother as the Qurän has called the woman who gives birth to a child as the mother. however, since the ovum of the first wife has been the base and foundation for the baby's creation, she should also be considered as his mother. There are examples in the jurists' works where the parentage of a child is associated with two persons.

43. Li'aan (Mutual cursing between the spouses)

The Shari'ah has made safeguarding of the honour of Muslims compulsory. The Prophet ﷺ has called the Muslims' honour similar to the Holy Ka`ba in sacredness. Hence, spying against Muslims has been forbidden and similarly, misplaced suspicion has also been deemed undesirable. The Prophet ﷺ has forbidden going after one's wives faults. On return from a long journey, the Prophet directed that instead of entering the houses at night, the caravan should spend the night outside the town and inform of his arrival at his home in advance. Therefore, the husband should have faith in his wife's character and keep himself away from baseless doubts and suspicions.

But the husband should also not become devoid of all sense of honour and bashfulness, and tolerate immodesty on the part of his wife. Therefore, the Shari'ah has taken all the precautionary measures as mentioned above. However, if the evil of the worst kind, i.e. unlawful copulation, still gets committed by the wife, then what should the husband do?

According to the general principles of the Shari'ah, he should bring four witnesses [to the court], and if he is unable to do this, he should be prepared to face the Alläh-decreed punishment (hadd) of eighty lashes for slander. But it's a fact that the availability of four eye-witnesses in such cases is nearly impossible. Here, the matter does not pertain to only making a false charge against another person's life; instead it is a question of the continuance or discontinuance of mutual faith and trust in one's own life, since the immodesty of a married woman amounts to a direct humiliation of the husband, makes the parentage of his child suspect and destroys his peace.

So the Shari'ah has laid down a special, exceptional ruling in this case. Each of the spouses is made to testify on oath regarding the truthfulness or falsehood of the accusation, four times each. The fifth time, the husband has to testify that if he is lying in his accusation, then Allāh's curse be upon him. Similarly, after four testimonies on oath by the wife, she has to testify a fifth time that if her husband is truthful in his charge, then Allāh's wrath be upon her. (Qurān 24:6-9)

If the husband denies his fatherhood to the baby immediately after he is born or at the time when compliments, etc. are received, then the judge will separate the couple through li`aan (mutual curse) and in addition, the parentage of the baby will not be established with that man and the baby will have no share in the inheritance, etc. of the man. However, if the time of compliments etc. is over and then the husband claims that the newborn is the result of unlawful copulation (and hence not his child), then the two will be separated through li`aan (mutual curse), but the parentage of the newborn will be associated with the husband only. Nevertheless, it must be born in mind that making such a grave charge against one's wife merely on account of doubt, suspicion or probability is a grievous sin and reprehensible act. Li`aan is to be used only when a husband finds his wife committing the crime and sees her involved in the very act of unlawful copulation.

44. Eelaa and Zihaar

[Eelaa = oath against conjugal relation.

Zihaar = calling one's wife similar to any of the women related to him by blood]

Eelaa and zihaar are among the sins associated with marital relations. Eelaa means taking an oath not to have sexual relations with one's wife. After that if the man does not have sexual relations with his wife for four months, the wife gets divorced by default (Qurān 2:227). Zihaar is comparing one's wife or one of her organs with one of the women among his blood relations or one of the latter's organs, looking at which is prohibited for the man. Since Zihaar implies hurting the wife, it is a sin and disobedience of Allāh. As a punishment, the husband cannot have intercourse with the wife until he has completed the prescribed repentance-act (kaffaara). The repentance-act for zihaar is to free a male or female slave, if not possible then to fast for two months [without break] and if this is also not possible then to feed sixty destitutes (Qurān 58:3). The specification of penalties and the compulsoriness of repentance-acts indicate that eelaa and zihaar are sins and acts undesirable to Allāh.

45. Family planning

One of the important social issues in the contemporary times is birth control and family planning. Some western thinkers have presented the theory of birth control as a matter of

necessity to maintain the balance between economic resources and requirements. Basically, Isläm does not favour family planning on account of economic reasons. Isläm teaches the firm faith that Alläh Who creates needy humans and animals in the world, also suitably increases economic resources and food products, as He is the Great Nourisher and also All-Knowing and All-Powerful Being.

Sometimes, there may be some particular medical necessity for a patient to adopt some form of birth control as a matter of dire necessity. In that case, it is allowable. There are various ways of birth control which differ in their rulings, so their respective rulings are mentioned below under separate headings.

46. Permanent birth contol

The method of birth control or contraception which puts an end to reproductive capability forever is totally prohibited. In our days, this is achieved through vasectomy on men and tubectomy on women. In old days, castration was done for this purpose. Some holy companions wanted to castrate themselves so that free their maximum time for worship, but the holy Prophet ﷺ forbade them. Hazrat Sa`d bin Abi Waqqaas reports that if the Prophet had allowed this, we would have performed castration: رد رسول الله ﷺ على عثمان بن مظعون التبتل، ولو أذن لاختصينا (The Prophet forbade Usmaan bin Maz`oon the life of singlehood. Had he got the permission, we would have performed castration.). Owing to this, the jurists have called castration prohibited. Qäzï Abul Hasan Maawurdi writes: ويمنع من اختصاء الآدميين والبهائم ويؤدب عليه (الأحكام السلطانية)(Castration of men and animals will be forbidden and the committer will be punished. – Al Ahkaamus Sultaaniyah).

In addition to castration, Haafiz Ibn Hajar has also called the application of medications which deprive a person of the reproductive capability as prohibited. He has reported consensus on this. والحجة فيه أنهم اتفقوا على منع الجب والخصاء، فيلحق بذلك ما في معناه من التداوي بالقطع أصلًا (The argument for this is that the scholars have agreed on castration and cutting away of the male genitalia being forbidden. So what is similar to it in essence will also have the same ruling, that is medication to completely sterilize a person.)

47. Abortion after spirit is blown into the foetus

For dealing with the issue of abortion, we will have to consider its two cases. The first is when life has been created in the embryo. According to Hadïth, the spirit (in the embryo) is created after four months or 120 days of conception. Probably, modern embryologists also concur with it. So abortion at this stage, after spirit has been blown, is prohibited by consensus. Ahmad `Ulaish Mäliki writes:

والتسبب في إسقاطه بعد نفخ الروح فيه محرم إجماعا، وهو من قتل النفس (Causing abortion after the blowing of spirit is prohibited by consensus and it is a kind of homicide.). Fatäwäa

Shaikhul Islām Haafiz Ibn Taimiya mentions: إسقاط الحمل حرام بإجماع المسلمين وهو من الوأد الذي قال تعالى فيه: وَإِذَا الْمَوْؤُودَةُ سُئِلَتْ، بِأَيِّ ذَنبٍ قُتِلَتْ؟ (Abortion is prohibited by the consensus of Muslims as it is a kind of "burying alive" about which Allāh the Exalted says: "When the female (infant) buried alive (as the pagan Arabs used to do) shall be questioned: For what sin was she killed?" – Qurān 81:8-9.)

However, if the embryo is alive inside the womb and it becomes impossible to save the life of the mother without its abortion, then it should be allowable. In this case, out of these two losses, the death of the mother is more severe while that of the embryo is less severe. Moreover, the existence of the mother is observable and palpable whereas that of the child is only probable. In a somewhat related situation, the jurists – preferring less evident analogy over more evident analogy – have allowed the killing of those Muslims whom the Misbelievers use as human shields since the loss of the Islāmic country from the Mulims is a bigger harm than the death of a few Muslims.

Here those texts may cause doubt in which the jurists have forbidden saving the life of one person by killing another, for example, Ibn Nujaim's text: لأن إحياء نفس بقتل نفس أخرى لم يرد في الشرع (… as the saving of a life by killing another life has not been prescribed in the Shari'ah.) or the text of Sharh us Siyar il Kabeer: المسلم لا يحل له أن يقى روحه بروح من مثله في الحرمة (It is not permissible to save a Muslim's life by killing another equally sacred life.) However, it must be remembered that this applies when the two lives or the two existences are of equal status. But here, the existence of the mother is palpable whereas that of the embryo is only palpable.

48. Abortion before spirit is blown into the foetus

The texts of some jurists regarding the abortion of foetus before the spirit is blown create a doubt that they consider it permissible and correct without restriction. Such texts are present in the juristic texts of Hanafis, Shāfi'īs as well as Hanbalīs. On the other hand, Mālikis and Imām Ghazaali among the Shāfi'īs have called abortion before spirit is blown also as impermissible without restriction. However, the reality is that this permissibility near Hanafis, Shāfi'īs and Hanbalīs is also restricted to the case when there is some necessity, with the abortion without necessity being forbidden and sinful near them also. `'Allāmah Ibn `Aabideen Shaami writes: لا يخفى أنها تأثم إثم القتل لو استبان خلقه ومات بفعلها (It is clear that if the structure of the embryo becomes clear and it dies due to some act of the mother, then she will bear the sin of murder.)

Abortion is not permissible even before the manifestation of organs (and after conception): إنه يكره فإن الماء بعد ما وقع في الرحم مآله الحياة، فيكون له حكم الحياة كما في بيضة صيد الحرم (Abortion before the manifestation of organs is also avoidable as the end of the seminal fluid after it reaches the uterus is life, so it will have the rulings associated with a living

being; as is the case with the egg of a bird of hunting, in the Haram [sacred region in and around Makkah where taking any life is liable to penalty].).

Thus, it is almost clear as light that abortion before blowing of spirit (before four months from conception) is also not permissible unless there is some excuse which is acceptable to the Shari'ah. Wherever unrestricted permissibility of abortion are mentioned in Zaheeriya and `Alamgiri, etc., it applies to abortion in the condition of excuse (necessity) only.

There can be two kinds of excuses. The first relates to the embryo itself like congenital defect, physical deformity, presence of fatal hereditary diseases, etc. Abortion may be permitted due to these reasons. Before the embryo becomes well-formed, its abortion is allowed, with some restrictions, even for protecting the suckling baby's lactation from adverse effects. On the other hand, the serious harm that the baby-to-be-born himself is likely to face after birth, in the case under consideration, is in essence more severe than the harm for the suckling infant. Therefore, abortion should be preferentially permissible in these cases.

The second type of excuses are those related to the mother, for example, threat to the mother's life, fear of her losing mental balance, inability to rear the to-be-born baby on account of her physical or mental disability provided that no other relations are present who may be expected to look after the baby, her getting pregnant by rape, etc. In all these cases, abortion will be allowed before spirit is blown into the foetus (within four months of pregnancy), as the jurists have permitted abortion even in inferior kinds of excuses. But, if the parents do not want a baby without reason and hence go for abortion, or there is a possibility of adverse effect on the mother's general health while there is no fear of any critical disease, then in these cases, abortion does not seem correct even before the spirit is blown.

49. Contraceptive pills

The method of temporary birth control in which such medicines are taken that incapacitate the male sperms after they enter the women's reproductive tract, rendering them incapable of reproduction, is also not permissible without necessity.

Shamsul Aimma Sarakhsi says: ثم الماء في الرحم ما لم يفسد فهو معدٌّ للحياة، فيجعل كالحي في إيجاب ذلك الزمان بإتلافه كما يجعل بيض الصيد في حق الحرم كالصيد في إيجاب الجزاء عليه بكسره (As long as the seminal fluid does not get spoilt in the uterus, it has the capability to become a living being. So, if it is destroyed (killed), it (the embryo in the earliest stages) is like a living being in the matter of imposition of penalty. It is similar to the case of a person in haram

(Makkan sanctuary) breaking an egg of a game, in imposing penalty on him due to this breaking.)

Shaikh Ahmad `Ulaish Mäliki writes: لا يجوز استعمال دواء لمنع الحمل. وإذا أمسك الرحم المني، فلا يجوز للزوجين ولا لأحدهما ولا للسيد التسبب في إسقاطه قبل الخلق على المشهور (Medication for contraception is not permitted. When the uterus holds the spermatic fluid; then, according to the well-known view, it would not be permissible for the spouses, nor for any one of them, nor for the master (of the pregnant slave) to adopt any method of abortion (even) before the embryo becomes well-formed.)

50. External methods for contraception

Using condoms or placing a cover over the woman's uterine cervix (uterus-mouth) for temporary contraception is exactly similar to the coitus interruptus which finds mention in the reports of the early Islämic days. There is a difference of opinions among the jurists regarding the permissibility or avoidability of coitus interruptus which is mentioned in detail in most of the Hadïth commentaries. However, most of the holy companions and pious preceding greats used to consider it avoidable. It is attributed to the Hanafis that they consider it permissible without any undesirability. However, Ibn Humaam writes that some among Hanafi scholars also favour its avoidability: في بعض أجوبة المشائخ الكراهية، وفي بعضها عدمُها (In some replies of our jurists, it has been called avoidable while in some others it has been called permissible (without undesirability).) On the issue of `azl, elaborating on the Hadïth text of ذلك الوأد الخفي (That's a covert burying alive.); reputed Hanafi Hadïth scholar Mullaa 'Alï Qaari writes: ذلك يدل على كراهة العزل، بل يدل على الكراهة (This text indicates the avoidability of coitus interruptus, nay, it does indicate availability.). It's true that the tone and tenor of Hadïths also support this ruling.

It is evident that condoms are similar to coitus interruptus in the ruling. Lop (لوپ, some form of obstruction to the uterus) is also similar to it in ruling. Owing to this, just as the jurists have called the wife's willingness necessary for permissibility of coitus interruptus by the husband, they have also called the husband's willingness necessary for shutting the uterine cervix (uterus-mouth) of the wife in any way: يجوز للمرأة أن تسد فم الرحم منها من وصول ماء الرجل إليه لأجل منع الحمل. واشترط صاحب البحر لذلك إذن الزوج. (It is permissible for the woman to shut her uterine cervix to obstruct the husband's seminal fluid from reaching it for the purpose of contraception. The author of Al Bahr has specified the husband's permission as necessary for this.). And on careful consideration, it will be clear that the same ruling also applies to the application of contraceptive ointments on the genitalia. In coitus interruptus and use of lop (uterine obstruction), the spermatic fluid does not enter the woman's uterus while in these kinds of ointments, the reproductive sperms of the man's seminal fluid die out and thus do not reach the woman's uterus. Therefore, since coitus

interruptus is avoidable, using these contraceptive means without necessity is also avoidable.

Some permitted excuses in this regard deserve special mention. Threat to the life of the mother, possibility of her mental illness, physical debility (weakness) or some severe disease, inability of the mother to bring up the baby accompanied by a lack of alternative arrangement, possibility of the child suffering from severe diseases, intention of keeping a suitable gap between two babies, and other similar excuses may make the use of such temporary contraceptives permissible. The jurists have permitted coitus interruptus in a less significant excuse like doing it for fear of probable disobedience and wickedness from the would-be children. Fatäwäa 'Älamgïrï says: رجل عزل عن امرأته بغير إذنها يخاف من الولد السوء في هذا الزمان، فظاهر جواب الكتاب أن لا يسعه لسوء الزمان (If a person does coitus interruptus with his wife without her permission fearing wickedness from the to-be-born baby, then the apparent answer of the book to the problem is impermissibility, but it is also mentioned that it would be permissible due to the spread of evil in the contemporary age.)

Applying these contraceptives for having a small family is not correct as it is contrary to the Hadïth تزوجوا الودود الولود (Marry a woman who loves much and procreates much.). Checking procreativity for social considerations is also not allowable. It is against the fundamentals of Isläm and the maternal responsibilities of the weaker sex. Some have called the use of temporary contraceptives for the preservation of beauty and charm, but giving higher priority to the spirit of prettification over the natural responsibility of the woman also does not appear correct. Therefore, these excuses are unacceptable in the Shari'ah. However, if a woman is compelled to earn due for fulfilling her livelihood needs due to her special circumstances, then temporary contraceptives may be permitted. Likewise, the campaign for population control for economic reasons that is taking place nowadays is, no doubt, an echo of the ancient Ignorance (jahiliya). The Quränic verse وَلاَ تَقْتُلُواْ أَوْلادَكُمْ خَشْيَةَ إِمْلاقٍ (Do not kill your children for fear of poverty. – 17:31) makes it impermissible, as the holy verse not only forbids killing of children, it also condemns the concept of “fear of poverty”.

51. Natural method of birth control

The method of temporary birth control in which no special act is done – the couple only avoid copulation in those days of the menstrual cycle in which, according to medical research, there is a high probability of conception – is, in its essence, permissible. However, if somebody has an intention which the temperament of the Shari'ah does not accept , then this method would be avoidable.

52. Assistance in birth control

It would not be allowable for a Muslim doctor to render any assistance in the cases of birth control which are impermissible. The forbiddance of assistance in sin is universally accepted near the jurists. Khulaasatul Fatäwäa says: ولو آجر نفسه من ذمي ليعصر له فيتخذ خمرا، يكره (If a person undertakes employment under a non-Muslim citizen of Islämic state to squeeze wine for him, it will be avoidable.). Differentiating between assisting a Muslim and a Misbeliever does not appear correct in this matter. Assisting a Misbeliever in a sinful act is also not correct, though the act might be permissible in Misbeliever's religion. The jurists write: رجل له أب أو امرأة ذمية، ليس له أن يقوده إلى البيعة وله أن يقوده إلى منزله لأن الذهاب إلى البيعة معصية وإلى المنزل لا(If a man's father or wife is a Misbeliever living in Islämic state, it would not be permissible for him to guide them to a church, etc. But it would be permissible for him to lead them back home. Going to church is a sin while going to home is not.).

Divorce

The Shari'ah views the marriage as a pure, strong and permanent relation. Isläm wants that the two persons who have vowed to live together and spend their lives as companions should keep their vow forever. They should not break the cord of this strong relation on account of minor differences and temporary disputes.

As divorce means breaking this cord, so naturally Isläm dislikes it. A Hadïth says that the Satan is pleased most when a couple is separated. Hazrat Saubaan reports that the fragrance of the Paradise is prohibited for the woman who demands divorce without a suitable reason. The Prophet ﷺ has ordered marrying and forbade divorce. Alläh does not like men and women who first obtain enjoyment from a spouse and then separate from him or her. In another report, the Prophet said that among the allowable acts, nothing is more detestable to Alläh than divorce. Therefore, the jurists have also called divorce without serious need as impermissible. `'Allämah Ibn Qudaamah Maqdisi says that talaaq without need is detestable. He quotes another pious man as saying that divorce is prohibited as it harms both him and his wife, and the Prophet has said: لا ضرر ولا ضرار (Neither harm yourself nor harm others.). The renowned Hanafi scholar `'Allämah Sarakhsi says: لا يباح إيقاع الطلاق إلا عند الضرورة لقوله عليه السلام: لعن الله كل ذوَّاقٍ مِّطْلاق، وقال: أيما امرأة اختلعت من زوجها من نشوزٍ فعليها لعنة الله والملائكة والناس أجمعين. وقد روي مثلُه في الرجل يخلع امرأته، ولأن فيه كفرانَ النِّعمة. (Divorce is not permissible except when necessary as the Prophet has said, "Alläh's curse is upon the men who savour many spouses and divorce frequently." He said, "Whichever woman wickedly takes khula` (wife-initiated divorce) from her husband, there is the curse of Alläh, angels and all the people." Similar words have been

reported for the man who does khula` with his wife, as it is ingratitude to Allāh's favour.)

The Prophet ﷺ has also indicated what can be the reason when divorcing is justified. He said: لا تطلّق النساء إلا من ريبة (Women should not be divorced except when their character becomes suspect (with regard to chastity).) In general, divorce is not limited to the case of suspicious character alone. It is a reality that sometimes, divorce and separation of spouses become a necessity and compulsion. Due to some reasons, it remains no more feasible to travel together on the road of life. The relations get so worse that spending life separately becomes the lone guarantor of peace for both. Under such circumstances, the Shari'ah permits divorce as an undesirable necessity.

01. Initial courses of action

However, the Qurān also directs that divorce should not be implemented in the first stage itself. All such courses of action should be taken which may ameliorate the situation and remove mutual differences. If the two come to terms in this way, then the husband should not divorce. Allāh says: وَاللاَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلاَ تَبْغُواْ عَلَيْهِنَّ سَبِيلاً (As to those women on whose part you see ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly, if it is useful); but if they obey you, do not seek means (of annoyance) against them. – Qurān 4:34).

From this verse, we come to know that first counselling talking should be applied. If it is not sufficient, then the husband should separate his bed to demonstrate the gravity of his displeasure, that is temporarily stop having sexual contact with her. If even this avoidance does not rectify her, then keeping in view her natural weakness and tenderness, you may also use your hands against her, within proper limits. Then if she corrects herself, live with her as an amicable life companion. If she does not mend her ways despite adopting all these methods and the woman remains bent upon unacceptable disobedience and transgression, then it indicates that the duo are incapable of setting right this aberration. In such a circumstance, the Qurān orders: وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُواْ حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيْدَا إِصْلاَحًا يُوَفِّقِ اللهُ بَيْنَهُمَا إِنَّ اللهَ كَانَ عَلِيْمًا خَبِيْرًا (If you strongly fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allāh will cause their reconciliation. Indeed Allāh is Ever All-Knower, Well-Acquainted with all things. – 4:35).

In other words, reconciliation should be attempted at through other wise, pious and empathic persons. If the mutual differences end, then the two would continue living as husband and wife. But if the two do not reconcile even after this arbitration and attempts by the referees, the two harbour mutual hatred and the woman continues her disobedience non-compliance to an unacceptable limit, then the Shari'ah permits divorce.

02. Role of women in checking divorce

Women can also play a significant and vital role in reducing the occurrences of divorce. They should keep the husbands well-disposed and inclined towards them through different ways. They should not allow an event to occur which may lead to mutual hatred and discord. The most important trait required for this is that the woman should have a complete understanding of the husband’s temperament. In every aspect of life, she should keep on gauging what things and acts please him and what displease him. Yet, if he gets angry, the wife should know which of his favourite things may be used to please him. She should be aware what is the suitable time for expressing a particular kind of demand or need. Any woman who deciphers this secret and applies it in her marital life will forever live a life of cordiality and there will be, in shaa Allāh, no chance of divorce.

This is a basic thing. Additionally, the woman should pay special attention towards the following general directions. First when the husband returns tired from work, she should welcome him with warmth and cheerfulness. She should not instantly place a demand of hers which might cause worry to the husband. The Hadïth describes a virtuous wife as the one whom when the husband looks at, he is pleased. A woman can be the object of this Hadïth only when she follows this direction.

Second, she should adorn and beautify herself for the husband. She should use all possible ornaments and ways of prettification. The Shari'ah does not allow beautification and adornment for other men whereas it prefers this for the sake of husband. This keeps the husband chaste and modest. He is protected from evil gaze (gazing stranger women) and is not attracted towards other women.

Third, she should carefully note that she must be completely indifferent to the men with whom the husband does not want her to have any relation. The Shari'ah in any case directs the use of veil while dealing with male strangers. But in case of men whom the husband dislikes, she should not have any transaction or conversation even within the permissible bounds. In such case, the temperament of the man is, naturally very sensitive.

Fourth, while demanding her needs, she should not adopt an attitude which indicates selfishness or which gives an impression that she is his opponent. For example, demanding garments for herself, not caring whether the husband has them or not, or if the husband brings garments then comparing them. In fact, she should take the path of maximum possible frugality and contentment, and give preference to her husband’s and other family-members’ needs over hers. If she is able to make a place for herself in his heart, the husband will, by himself, do what pleases her.

Moreover, there should be variety in food items and dishes so that the man is no more inclined towards restaurants. She should be particularly careful that she does not complain about her husband to others. If at some time, there is a discord or unpleasantness in the relation, then also she should keep the matter to herself only.

03. How to issue divorce?

Even in the ultimate case, the husband should not issue three divorces at once. The best method is to issue just one divorce using the word "talaaq" (meaning divorce) in her period of cleanliness (period between two successive menses) from menstruation provided he has not copulated with her in this cleanliness period. After this single divorce and before the passage of the post-divorce waiting period (`iddah), if the husband feels guilty over his decision or if the woman expresses remorse and promises a better companionship in life, then the husband will have the right to take the wife back. If he is still adamant over separation, then he should leave her in this state only. The marital relation will automatically end after the passage of the prescribed waiting period.

If there is regret even now and the couple feel that they should keep this relation, then they can marry anew. If there is a divorce even after this new marriage, then also he will be permitted to take her back. But if there is no amendment even after this, then as a last course of action, he may issue the third divorce. But this permission for the third divorce is in the last and final stage. Issuing three divorces in one go is a grave sin and disobedience of Allāh. Once Allāh's Prophet ﷺ was informed about a man who had issued three divorces in one go. The Prophet stood up in extreme anger and said, "Allāh's Book is made fun of while I am still present among you." He was so enraged that one of the holy companions stood up and asked, "Shouldn't I kill him?" Hazrat 'Umar has even flogged such a man.

However, if three divorces are issued in one sitting or on three different occasions in one period of cleanliness of the woman, the three divorces do get executed. When Hazrat Hafs bin Mugheera issued three divorces to his wife, Fätimah bint Qais, in a single sentence in the days of the Prophet, the Prophet separated his wife from him. Hazrat Hasan bin 'Alï issued three divorces to his wife 'Äishah in a single instance. Later when he came to know of her grief, he started weeping and said, "Had I not heard my grandfather ﷺ saying that if a man divorces his wife thrice, the wife will not be lawful for marriage to him till she marries another man; I would have revoked my divorce.

04. When divorce is forbidden

It is not permissible to issue divorce in a period of cleanliness (period between two successive menses) in which the husband has copulated with his wife. Divorce should be

issued in a period of cleanliness in which there has been no occasion of copulation. Commenting upon the verse of فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ (Divorce the women during their 'iddah (prescribed periods). – Qurän 65:1), Hazrat 'Abdulläh bin Mas'üd said that divorce should be issued in a period of cleanliness in which there has been no copulation: الطلاق في طهر غير جماع.

Moreover, the Prophet has severely censured divorcing during menses. In these days, the woman naturally becomes short-tempered and peevish and the physical (sexual) relation which is an important cause for the duo's mutual interest and association also remains temporarily suspended during this period. Therefore, there is scope for considering the divorce to be caused by such a momentary discord. There is a good possibility that once the period of menses is over, their relations may return to normalcy. According to a Hadïth, 'Abdulläh bin 'Umar رضي الله عنهما divorced his wife during her menses. His father, Hazrat 'Umar, informed the Prophet who was displeased. The Prophet asked him to order his son to reverse the divorce, and when she is clean of menses, then he may issue divorce. Another Hadïth says that the Prophet ﷺ reprimanded 'Abdulläh bin 'Umar and taught him the method of divorce in these words: "Ibn 'Umar! You have adopted the wrong method. The correct method of divorce is to wait for her period of cleanliness, and then issue divorces in successive periods of cleanliness, one by one (two divorces should be given thus). When she enters her third period of cleanliness, you should either divorce her (forever) or keep her."

Thus, divorce can be classified into three categories according to effects and results: reversible divorce, estranging divorce and absolute divorce.

05. Reversible divorce (talaaq e raj'ee)

Reversible divorce or talaaq e raja`ee is the one in which the marital relation ends when the post-divorce waiting period (`iddah) is over. During the waiting period, the husband may take his divorced wife back without a new marriage contract. For this, even the wife's consent is not required. A one-sided move by the husband is enough. This is the case when a man issues one or two divorces to his wife using the word "talaaq" (meaning divorce) or some other explicit word. After one reversible divorce, if the husband issues one or two divorces during the post-divorce waiting period, it is also executed (taking the number of divorces to two or three respectively).

06. Method of reversal of divorce

The very purpose of the reversible divorce is to allow time for reconsideration after this divorce. Therefore, the husband should ponder over it again and again till the end of the post-divorce waiting period, make attempts to ensure that whatever faults are there in the

wife get removed, and forgive her minor and ordinary faults. The wife should also not let any such event occur which might intensify the discord and widen the breach between them. She should rather adorn and prettify herself and try to attract her husband with her graceful manners. She should resolve not to repeat her earlier mistakes.

Now if the husband wants to reverse the divorce during the `iddah, then the best method for this is to declare in front of two witnesses that I had divorced my wife but I now regret it and take her back as wife. This is the best method for reversal.

Even if he pronounces such a statement while alone, without making witnesses, or does something to the woman which can only be done to a wife like kissing her, copulating with her or touching any of her sexually arousing organs with desire (or arousal), or looks at her genitalia with desire, then also it is sufficient for reversal of divorce. The woman will remain his wife after such an act.

07. Estranging divorce (talaaq e baain)

Estranging divorce or talaaq e baain immediately separates the couple and the marital relations end completely with it. After this divorce, the wife cannot be taken back during post-divorce waiting period, but later, whenever they like, they may remarry with mutual consent and willingness.

This divorce is executed when an implicit word is used for divorce, or the words "I issue talaaq e baain to you" are used. The reversible divorce also converts to estranging divorce after the passage of the post-divorce waiting period, and the couple become completely separated with immediate effect as soon as the waiting period ends. As the marriage becomes null and void with the execution of an estranging divorce and the woman no more remains the man's wife; if after one estranging divorce, the man issues a second estranging divorce (immediately), or issues one more estranging divorce during the post-divorce waiting period, this latter divorce will not be effected. For instance, if the man says, "I have issued talaaq e baain to you, I have issued talaaq e baain to you", then only the first of the two estranging divorce will be effected. But if he issues more than one estranging divorce in a single sentence, like he says "I have issued two talaaq e baain to you", then both (or all) the divorces will be effected. During the post-divorce waiting period of a estranging divorce, if the man issues a divorce again using explicit words (called reversible divorce), then this divorce will get effected.

08. Divorce before first spousal meeting

For a woman with whom the husband has not had copulation, even if the husband issues a divorce using the explicit word of "talaaq", it will be considered as estranging divorce. After this, it will not be permissible for him to take the wife back without a new marriage

contract. In this case also, if the husband issues two or three divorces using separate sentences, only one divorce will be effected, the second and/or the third will not be effected. For example, if the husband says, "I issue talaaq to you, I issue talaaq to you", then only one divorce will be executed. However, if he issues two (or three) divorces in a single sentence, then both (or all) will be effected, like when he says "I issue two talaaq to you".

The benefit of the third divorce not being executed is that if the duo wish to marry again, they would not require halaala. The advantage from the second divorce not being implemented is that if the duo remarry in future with mutual consent, then there will be scope of two more divorces for the husband; and after two divorces upon remarriage, absolute divorce will be effected.

09. Correct solitude (khalwat e saheeha)

If a man does not copulate with a wife but the couple get together in solitude that there is no physical or legal (Islämic) hindrance to the sexual act, then this coming together is considered equivalent to copulation. The wife will be subject to the rulings of those women with whom copulation is not possible. Such terminology is called correct solitude (khalwat e saheeha) in the jargon of Islämic jurisprudence.

10. Absolute divorce (talaaq e mughallaza)

Absolute divorce refers to that divorce which makes a remarriage with the wife impermissible unless the wife marries another man. The second husband should divorce her or die after copulating with her, and the woman should also complete the waiting period after divorce or spousal death. Now the woman will be lawful for marriage to the first husband and once again, she can live with her first husband as man and wife after remarriage.

After the completion of post-divorce waiting period in the case of reversible divorce, and just after the divorce in the cases of estranging and absolute divorces, the husband and wife acquire the status of total strangers. Such women should veil themselves from their former husbands and should leave their husbands home as soon as their post-divorce waiting periods are over.

11. Halaala (making the woman lawful for marriage to her former husband)

It has been mentioned above that after absolute divorce, a woman would be lawful for marriage to her former husband when:

1.The waiting period of the current absolute divorce gets over.

2.Has a valid marriage with another man.

3.The new husband should have sexual relation with her after marriage.

4.The new husband then divorces her on his own, or passes away.

5.The woman should then complete the waiting period of this divorce or death.

This is also called halaala. (Qurän 2:230)

In our days, a wrong custom has gained ground. Many people marry or organize a marriage with the only intention that the husband would divorce the wife without copulation or after copulation to make the woman lawful for marriage to her former husband. Now, if the new husband divorces without copulation, she won't be lawful for her first husband, as copulation with the second husband is a necessary condition which is explicitly mentioned in Hadïth. If the new husband divorces after copulation, she will be lawful for marriage to her first husband, but the new husband who had married with the intention of halaala and the person(s) who had organized this marriage would be all gravely sinful. The Prophet ﷺ invoked Alläh's curse upon such people. However, if someone marries without the intention of halaala and then divorces her because of some reasons, then there is no sin.

12. Wife-initiated separation (khul`)

Just as the man has the right to divorce, the woman has been given allowed wife-initiated separation (khul`). When a woman gives some money to the husband or gives up what her husband owed to her and, in return, obtains divorce from the husband, and the word used for declaring this divorce is "khul`", then it is called khul`. One estranging divorce is implemented due to wife-initiated divorce (khul`).

Wife-initiated divorce is an undesirable thing in the Shari'ah. The entire institution of family goes into a mess due to separation between spouses. The offspring cannot be raised in a way they ought to be. More often than not, they have to be deprived of either the paternal kindness or maternal love. Therefore, to the extent possible, couples should avoid separation. They should bear in mind that Alläh may have decreed some good in this apparent evil (that their marital life has become).

According to a Hadïth, a woman who demands khul` unreasonably suffers the curse of Alläh, angels and all humans. Another Hadïth says the fragrance of Paradise will be forbidden for a woman who demands divorce from her husband without a suitable and exceptional reason. The Prophet called the woman who unnecessarily demands khul` as a

hypocrite. Therefore, demanding divorce from the husband on account of minor complaints, petty squabbles, or merely for renewal of pleasure (by having sex with a new person) and getting a new (sexual) taste is a grave sin. Similarly, demanding khul` on matters which are permitted in the Islämic law is extremely improper and detestable. In our society, for example, women start demanding divorce if the husband marries a second wife, whereas the second marriage is permissible and lawful if it does not lead to injustice and partiality. So demanding divorce because of this is incorrect.

However, on account of some proper reasons, if there is a strong probability that the couple will not be able to live together, an environment of extreme hatred and discord has developed and their relations have come to a stage that there is a strong likelihood of their inability to fulfil their duties towards each other; then the Islämic Shari'ah permits separation. When the discord reaches this level, it is a duty of the husband that he should divorce the wife if she demands, and select a new life-partner for himself.

Several such cases occurred in the days of the holy Prophet ﷺ in which the wife desired wife-initiated divorce on account of the husband's too much beating or his ugliness. The Prophet ﷺ got back the money and gifts given to the wife as mahr and ordered the husband to divorce her. In our Indian society, normally the women make such demands only when they get into deep water and their mutual discord and tension become exceedingly unbearable.

Two conditions are necessary for wife-initiated divorce. First, the husband should be willing to divorce and second, the wife should give some compensation. If the husband is not willing to divorce, then the woman can not carry out on-sided wife-initiated divorce like the husband who has the right to divorce unilaterally. However, the woman has the option of getting her marriage nullified by the Islämic judge after proving before the judge, the husband's tyranny and/or a reasonable basis for separation.

The compensation that the woman pays for wife-initiated divorce has the status of a mutual agreement, so whatever amount they decide mutually will be the compensation. Nevertheless, the Shari'ah has set some proper limits, the details of which are mentioned here. If the transgressor is the husband himself, then he should not accept any compensation for the divorce and do it gratis. The Shari'ah has given only two options to the husband: retaining the wife on reasonable terms or releasing her in a good manner. Now as the husband is unable to follow the first option, he should choose the second option. On the other hand, if the transgressor is the woman, then the man should accept compensation up to the extent of what he had paid her as mahr. In no case should he take a compensation that exceeds the mahr. If he has not paid the mahr yet, then he should divorce her on the condition of her forgoing the mahr.

13. Waiting period (`idda)

The Shari'ah has specified a prescribed waiting period for the woman after divorce from the husband and after the husband's death during which she cannot marry any other man. This period is called "waiting period" or `idda. The purpose of the waiting period is expression of grief and sorrow upon separation from her husband and/or mourning her husband's death. Another purpose is to ascertain that there is no seminal fluid in the woman's uterus from her former husband. So if she now remarries, there is no fear of mix up of lineage of the to-be-born and of confusion in determining the father of this baby.

Waiting periods are of two kinds: waiting period for divorce and waiting period for husband's death.

14. Waiting period for divorce

This waiting period differs for different kinds of women.

•If the woman is pregnant, then the waiting period continues till childbirth. The waiting period is over with the delivery of her baby (Qurän 65:4).

•If the woman is not pregnant and her menstrual cycles are going on, then she will spend three periods of menses as waiting period after the period of cleanliness in which she was divorced. If, contrary to the preferred method of Islämic tradition, she has been divorced in a period of menses, then she will have to spend three periods of menses other than that (Qurän 2:228).

•If the woman is not pregnant and because of her immature age, her menses have not started, or her menstrual cycle has stopped because of old age, then her waiting period is three months (Qurän 65:4). If the divorce was carried out on the first day of a lunar month, then three months' waiting period will be spent according to the lunar calendar. If the divorce has been carried out at any other time of the lunar month, then the waiting period will be 90 days.

•The divorced woman who has not got together with her husband in solitude does not need to spend any waiting period for the divorce.

During the waiting period of the reversible divorce, the woman should take extra care to keep herself adorned, ornamented and beautified so that the husband feels inclined and disposed towards her. Moreover, since the woman continues to be the wife of the divorcer during the waiting period of a reversible divorce, it will not be permissible for any other man to make a marriage proposal to her explicitly or implicitly.

After estranging or absolute divorce, the woman instantly moves out of the marriage and no more remains the wife, so to express her grief over this separation, she should completely avoid adornments and ornaments. She should not apply fragrance, wear colourful and bright garments nor use jewellery, cream, powder, scent, perfumery, etc. She should spend her waiting period in the same house where the divorce has occurred and not move to any other home. No proposal for marriage should be made to her.

15. Waiting period for husband's death

Before Isläm, several dreadful, inhuman and pain-inflicting methods of spending the waiting period prevailed. Such women were confined in a dark, dingy and stinking room for a whole year and animal excreta would be thrown upon them. Moreover, these unfortunate, calamity-struck women were considered damned and inauspicious. All the bounties of this world were prohibited to them all their life. In the Hindu religion, the woman would consider burning herself in the funeral pyre of her husband a religious duty. When Isläm came, it rectified the uncivilized, inhuman and brutal custom. On one side, Isläm put an end to the tyrannies inflicted upon this downtrodden community of the human being, and on the other side it gave due regard and consideration to the husband’s favours and his high status. It laid down a permissible way for the wife to express her natural grief and sorrow, and safeguarded the parental lineage from mix-up.

The waiting period meant for mourning that becomes compulsory following the husband’s death is applicable both to mature and immature women, no matter she had had the opportunity to get together with her husband in solitude or not. During this waiting period also, adornment, beautification, use of jewellery, scent, partitioning the head-hair with a comb, applying oil to the head or kohl to the eyes without necessity and without disease, chewing betel-leaf, etc. are forbidden.

The duration of this waiting period varies for non-pregnant women is four months and ten days (Qurän 2:234). The waiting period of a pregnant woman is over when she delivers the baby. Till the completion of this period, she can neither remarry nor leave her present house to visit some other place. The permission to mourn for four months and ten days is applicable only to the husband’s death. Upon the death of any other relation, a mourning of more than three days is not permitted.

It is permissible to apply oil to the head on account of headache and kohl to the eyes on account of eye-pain. However, if applying kohl at night is sufficient, she should not apply it in the day; and if white kohl is sufficient, then black kohl should not be used.

Marriage proposal by dropping a hint may be sent during the waiting-period of the husband’s death. The method for implicit proposal is that the man may say to her that he

plans to marry, or that he plans to marry a woman who has such and such attributes, and then list out the attributes present in that woman. The woman should spend her waiting period in the house where she used to live at the time of the husband's death. However, if there is some reasonable excuse, she may shift to another house. Examples of reasonable excuses are expulsion of the woman from the house by the husband's inheritors; or – in the case of the house being rented and the landlord demanding the rent – her financial state not allowing her to pay the landlord.

If the woman needs to step out of the house due to absence of a person who could buy provisions for her, she may go out but must not stay outside for more than necessary duration. She must return home and spend the night there in such a way that the major portion of the night is spent at her house.

If the woman has gone to her parental place at the time of her husband's death, then she should return to her husband's house without delay and spend her waiting period in this house which her husbanded had provided her. The waiting period has to be spent in the house which she had got from her husband to live. If the separation has occurred due to divorce, wife-initiated divorce or some other reason, then it is not permissible for an immature woman to step out of her house. An immature girl can step out of the house with her husband's permission in the case of reversible divorce, and in the case of estranging divorce, without her husband's permission.

Total veiling is incumbent in case of an estranging divorce or an absolute divorce, and the man and woman should never appear before each other. It is not enough for the woman to hide her body only from her husband, as little conscientious barrier remains between the two due to their previous relations. The chance of them committing the evil is strong here. Of course, there is no need for veiling from the husband in case of a reversible divorce. The husband cannot take her divorced wife with him on a journey, even if she remains in her waiting period.

16. Waiting period for unlawful copulatress

As the purpose of the waiting period is to express respect and show consideration towards the previous marital relation and unlawful copulation is a case of extremely evil and immoral relation, there is no waiting period for unlawful copulation. The woman can marry even if she gets pregnant. Now if she married the same unlawful copulater, then he can copulate with the wife without any interim waiting period. But if another man has married the unlawful copulatress, then the marriage will be valid but marital sex will not be permissible till she delivers the baby (Hidaayah 2/312).

Appendix

` stands for Arabic ain ع

‘ or ’ stands for Arabic hamza ء

Farz	obligatory, mandatory
Waajib	compulsory
Sunnat	Prophet’s tradition, custom
Sunnat e muakkada	emphasized custom
Nafl	
Mustahab	desirable
Afzal	preferable, highly rewarding, more rewarding
Adab, Aadaab	etiquette
Jaaiz,mubaah,halaal	permissible, allowable
Man`, nahy	forbidden
Makrooh tanzeehi	undesirable, avoidable
Makrooh	detestable
Makrooh tahreemi	strictly detestable
Haraam	prohibited

Ahle Kitaab	Scripture People
Ahle Sunna	
`Aqeeda	doctrines
Baihaqi	
Badarja e aulaa	preferentially
Dahriya	Atheist

Fuqahaa jurists

Had, hudood Allāh-decreed punishment

Hadïth tradition

Halaala a thrice-divorced woman being lawful in marriage for the first husband after she is married to another man, has copulation and is then divorced by him.

Hanafi

Hanbali

Helper

`iddah post-divorce waiting period

Iztiraar indispensability, dire necessity

Kaafir Misbeliever

Khula' wife-initiated divorce

Kinaaee implicit

Kitaab, baab, fasl unit, chapter, topic

Kufr Misbelief

Laa Mazhab agnostic

Māliki

Mo'min Believer

Munaafiq Hypocrite

Mut'ah

Nabi, Rasoolullaah Prophet ﷺ

Najaasat filth

Nasab filiation, parentage

Nazeer, nazaair similitude

Religious impropriety:deeni mafsada

Riwaaya report, narration

Sahäbah holy companions

Sahaabi

Salaf preceding great

Sareeh explicit

Shäfi'ïe

Shahwat desire, arousal

Sura

Ta`zeer punishment of crimes wherein the quantum of sentence has not been fixed by Alläh

`uzr necessity

veillessness

Zaroorat necessity

Zinaa unlawful copulation, unlawful copulater, copulatress

Zindeeq hypocrite apostate

Revision

- Halaal o haraam's footnotes from topic 6
- The texts within brackets [ ] are from Shamsul Isläm.
- Make topics 47-53 as sub-topoics of 46. Family planning.
- Make topics 55-70 as sub-topics of 54. Divorce
- How did the narrator companion know that the Prophet kissed 'Äishah r.a.?

pmd = Prophet Muhammad ﷺ

thp = the holy Prophet ﷺ

pbuh = ﷺ

puh = (عليه السلام)

phm = (May Allāh’s Pleasure be upon him) (رضي الله عنه)

phr = (May Allāh’s Pleasure be upon her) (رضي الله عنها)

ptm = (May Allāh’s Pleasure be upon both of them) (رضي الله عنهما)

ptm = (May Allāh’s Pleasure be upon them) (رضي الله عنهم)

mhm = (May Allāh’s Mercy be upon him) (رحمة الله عليه)

mhr = (May Allāh’s Mercy be upon her) (رحمة الله عليها)

mb = (May Allāh’s Mercy be upon both of them) (رحمة الله عليهما)

mtm = (May Allāh’s Mercy be upon them) (رحمة الله عليهم)

[Translation of Halaal o Haraam by Maulana Khaalid Saifullaah RahMänï, pp. 244-333]

Also referred:

Dars e Tirmizi by Maulana Md Taqi Usmani, vol. 3, pp. 343-525. Tanzeemul Ashtaat by Maulana Md Abul Hasan, vol. 2, pp. 164-218. Faizul Baari by Shaikh Md Anwar Shah Kashmiri, vol.4, pp. 274-333. Hidaya by Abul Hasan 'Alï bin Abü Bakr Al Farghaani Al Margheenani, vol. 2, 305-449.

Al Mukhtasar Al Qudoori by Abul Hasan bin Ahmad bin Muhammad bin Ja'far Al Baghdadi Al Qudoori, pp. 157-194 [Go to top]